Popular Government

SCHOOL OF GOVERNMENT

75 YEARS

UNC CHAPEL HILL
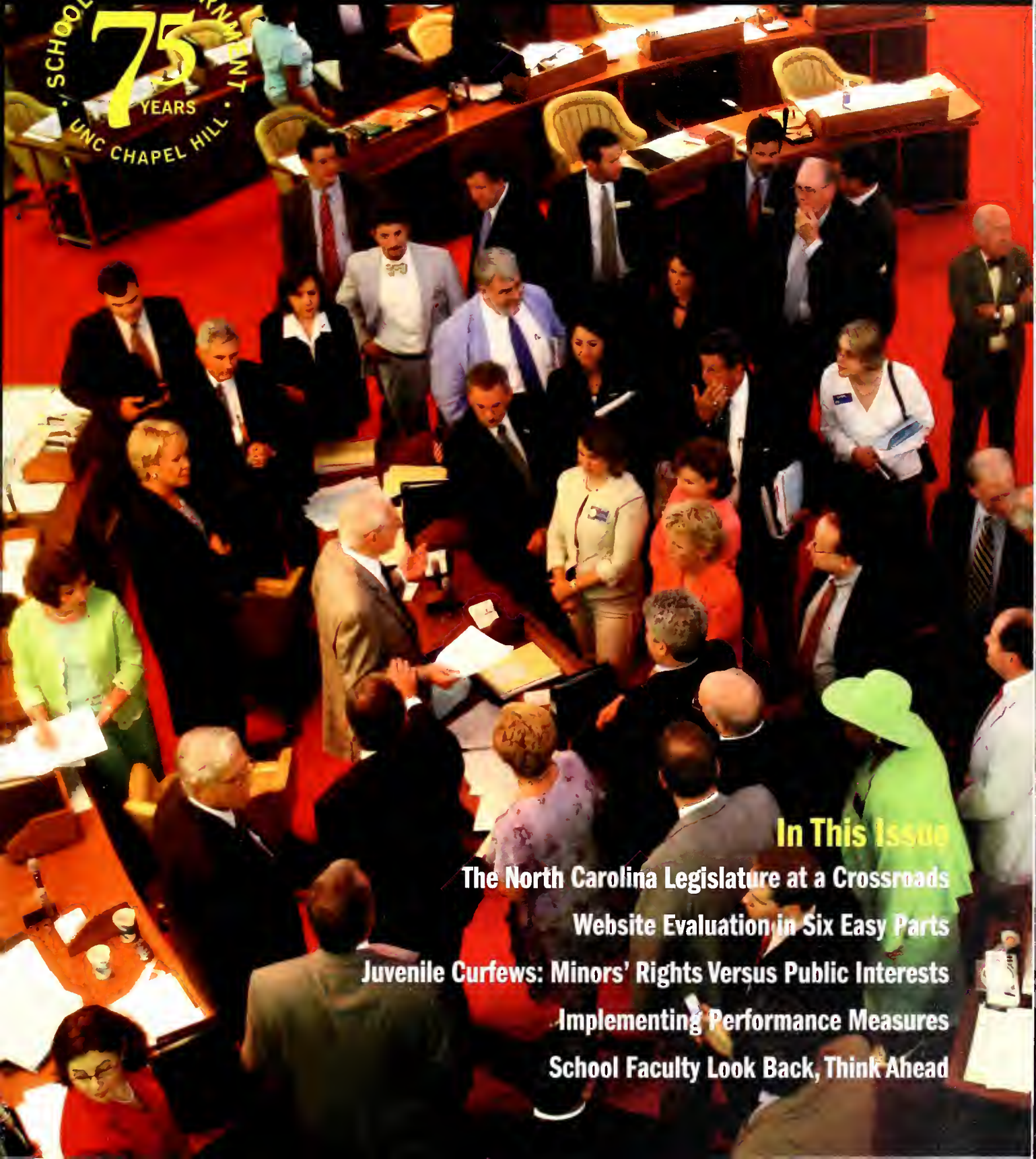
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Popular Government

James Madison and other leaders in the American Revolution employed the term "popular government" to signify the ideal of a democratic, or "popular," government—a government, as Abraham Lincoln later put it, of the people, by the people, and for the people. In that spirit *Popular Government* offers research and analysis on state and local government in North Carolina and other issues of public concern. For, as Madison said, "A people who mean to be their own governors must arm themselves with the power which knowledge gives."

UNC SCHOOL OF GOVERNMENT

The School of Government at the University of North Carolina at Chapel Hill works to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and strengthen state and local government. The core components of the School are the Institute of Government, established in 1931 to provide educational, advisory, and research services for state and local governments, and the two-year Master of Public Administration Program, which prepares graduates for leadership careers in public service. The School also sponsors centers focused on information technology, environmental finance, and civic education for youth.

The Institute of Government is the largest university-based local government training, advisory, and research organization in the United States, offering up to 200 classes, seminars, schools, and specialized conferences for more than 12,000 public officials each year. In addition, faculty members annually publish approximately fifty books, periodicals, and other reference works related to state and local government. Each day that the General Assembly is in session, the Institute's *Daily Bulletin*, available in electronic format, reports on the day's activities for members of the legislature and others who need to follow the course of legislation.

Operating support for the School of Government's programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit www.sog.unc.edu or call 919.966.5381 for more information on the School's courses, publications, programs, and services.

Popular Government

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ON THE COVER: *Can the General Assembly improve its effectiveness? Its members and staff think so.*

N.C. Journal

New Bulletin Explains Law on Immigrants' Eligibility for Benefits

May local government agencies in North Carolina provide benefits or services to immigrants? How does the status of an immigrant affect which services may be provided? School of Government faculty member Jill Moore addresses these questions in a May 2007 Local Government Law Bulletin *Are Immigrants Eligible for Publicly Funded Benefits and Services?*

Federal, state, or local funds support a wide variety of services: Medicaid, food stamps, assistance for the disabled, child and adult protective services, school lunch programs, and vaccinations, among many others. North Carolina state and local government officials often question whether noncitizens—or certain subgroups of noncitizens, such as undocumented immigrants—are eligible to receive publicly funded benefits or services. There is no across-the-board answer. Instead, each benefit must be considered separately.

This is not an easy task for North Carolina governments. The federal laws governing immigrants' eligibility for benefits are extremely complicated. In general, noncitizens are not eligible for publicly funded benefits and services on the same terms as citizens. However, different subgroups of noncitizens are treated differently and inconsistently under the federal laws. As a result, some public benefits *must* be denied to some subgroups of immigrants, even those who have green cards. At the same time, other benefits *may not* be denied to immigrants, even those who are undocumented.

The bulletin describes immigrant benefit eligibility under federal laws and includes detailed information about which categories of immigrants are eligible for some of the major public benefits, such as food stamps and Medicaid. It is available for free downloading at www.sogpubs.unc.edu/singlebook.php?id=1104.

LOCAL GOVERNMENT LAW BULLETIN

ARE IMMIGRANTS ELIGIBLE FOR PUBLICLY FUNDED BENEFITS AND SERVICES?

Center Helps Organize National Conference on Paying for Water

The School of Government's Environmental Finance Center (EFC) helped organize and lead sessions at a national conference, "Paying for Sustainable Water Infrastructure," held in Atlanta on March 21–23.

More than 650 participants discussed integrative strategies to lower water system costs and increase investment in infrastructure. Sessions were organized into four tracks:

• Sustainable Water Infrastructure

• Federal Roles in Water Infrastructure Innovation

• State and Local Innovations

• International Innovations in Finance, Technologies, and Management

EFC Director Jeff Hughes led the State and Local Innovations track, and EFC Outreach Coordinator Stacey Isaac Berahzer managed sponsorships and helped organize the exhibits. Other EFC staff presented posters on innovations in the Southeast.

The EFC serves North Carolina and seven other southeastern states through partial funding from the U.S. Environmental Protection Agency. The conference website, www.payingforwater.com, has complete information on the sessions and the presentations. For more information about the EFC, visit www.efc.unc.edu/.

Project Assists Government and Jail Personnel with Jail Health Law

In 2006, in partnership with the North Carolina Association of County Commissioners, the School of Government established the Jail Health Law Project. The project assists North Carolina county government and jail personnel as they deal with legal issues related to health care for people awaiting trial and people serving their sentences in jails.

The project was instituted in response to the growing number and variety of legal issues related to the government's duty to provide appropriate health care to inmates and detainees. Local governments have an obligation under state and federal law to provide adequate health care to people in custody. The project helps local jails meet the standards of care. It offers education and training on legal health care issues to jail administrators, sheriffs, health care providers, and other local officials. It also develops written materials on jail health policies and procedures, and offers individual consultation on specific issues that may arise. The project is developing a website and a listserv to facilitate communication and share information.

An advisory committee guides the work of the project. Committee members have both experience in dealing with health care issues in the jail setting and specific professional perspectives on the issues. Sheriffs, jail administrators, attorneys, trainers, and health care providers are represented.

Day-to-day operations for the project are the responsibility of attorney Jodi Harrison, who hit the ground running when she joined the School of Government in July 2006. "I've presented at four statewide conferences so far, as well as a number of local association meetings," she says. "I've also answered more than one hundred calls asking for assistance with legal issues. I'm working closely with the advisory committee to develop and deliver materials to help jails deal with this expanding area of law."

For more information on the Jail Health Law Project or for assistance in this area, contact Harrison at 919.962.0103 or jharrison@sog.edu.unc.

The State of the Legislature:
A Self-Assessment by North Carolina Lawmakers

David Kiel and Thomas Covington

Recent fund-raising and influence-peddling indictments and convictions in both Washington, D.C., and Raleigh have led to concerns about the legislature as an institution and to an outcry for legislative reform. North Carolinians might be surprised—and heartened—to learn that many of their lawmakers share those concerns.

In this article, current and former North Carolina lawmakers speak in their own words about their institution, the General Assembly. Through their comments, we show how they examine and evaluate the legislature's performance, assess the trends and events that have influenced the institution most in the last twenty years, and describe how these trends have affected the legislature's overall effectiveness. We begin by putting these trends in a national context. We conclude with a call for the General Assembly and its leaders to heed the comments presented in this article and take major steps toward self-renewal.

The State of State Legislatures Nationwide

Studies of state legislatures nationwide indicate that they are going through stressful transitions.[1] Legislators are experiencing increased time demands and expectations created by the explosion of information and by technologies of rapid communication. They are expected to process more information, respond immediately to multiple publics who send e-mail, handle pre-recorded

Oh wad some power the giftie gie us,
To see oursels as ithers see us!
It wad frae monie a blunder free us,
An' foolish notion.

—Robert Burns, 1796

phone messages, and, most recently, pay attention to the blogs. Politics is more partisan and more contentious. The public has less confidence in the legislature than it had in the past. More legislators now see their time in the state legislature as a stepping-stone to higher office, so they try to establish partisan voting records, score points in the media, and reinforce ideological positions.

These conditions and trends are exacerbated by computer-based analyses of voters to ensure homogenous, narrow-interest, politically safe districts for incumbents. Legislators must spend more and more time raising funds for increasingly expensive media campaigns. Consequently, special- and single-interest lobbyists and groups representing organizations with deep pockets exert increased influence. Also, legislative leaders skilled at raising substantial campaign funds command special new power.

The net result nationwide for governing at the state level is that finding solutions to public problems that will achieve the support of a majority of legislators has become a more partisan, more contentious, and more difficult process. These conditions have produced state legislatures that do not allow enough time for critical tasks like thoughtful deliberation, creative problem solving, compromise, and strategic decision making and policymaking. As the Jack Abramov scandal of 2006 showed, these trends are mirrored—and amplified—at the level of the U.S. Congress.

Kiel has served as an organizational consultant to government agencies since 1985. Covington was director of fiscal research for the North Carolina General Assembly for seventeen years. Contact them at dkiel@mindspring.com and tlc180@earthlink.net.

North Carolina's Participation in National Legislative Trends

The ethical questions widely reported in the press during 2006 concerning the North Carolina General Assembly were not of the same scale and magnitude as those afflicting Tom DeLay, former majority leader of the U.S. House of Representatives, and his fellow members of Congress. However, the early 2007 guilty plea of Jim Black, former speaker of the N.C. House, gives credence to the view that the General Assembly has not been immune to these national trends. The tribulations of the Washington and Raleigh legislatures produced similar institutional reactions: trumpeting of big reforms in campaign finance and lobbying laws. In each instance, the press characterized the effort as too little and too late.[2]

In our study of the North Carolina legislature, we found evidence that many past and present legislators, Democratic and Republican, are concerned about how the legislature as an institution is standing up to these nationally highlighted pressures. We originally designed the study as a needs assessment for a potential legislative training program, but we quickly found that we were uncovering information related to deeper institutional trends and issues.

We conducted interviews in 2004 with a group of fifty-three past and present lawmakers. About 70 percent were legislators, and about 30 percent legislative staffers and senior lobbyists. All spoke under the condition of anonymity.[3] Those interviewed included a mix of men and women, Caucasians and African Americans, Republicans and Democrats, and newer and more experienced legislators. Because one of us was the legislature's director of fiscal research for seventeen years, and because the Z. Smith Reynolds Foundation was supporting our study, we experienced a 100 percent positive response rate to our requests for interviews.

> **The information explosion and technologies of rapid communication have raised the public's expectations of legislators.**

This report is unique in relying exclusively on legislators', staffers', and lobbyists' own perceptions and presenting findings in their own words. We think that it constitutes a candid institutional self-evaluation. Our respondents discuss what makes them proud (or not proud) of the General Assembly, how they assess its effectiveness, what trends have influenced the legislature over the past two decades, and what impact these trends have had on legislative effectiveness.

Lawmakers' Evaluation of Their Performance

We asked lawmakers when they were most and least proud of the legislature. Their responses to the "most proud" question suggest that they use a variety of criteria to judge effectiveness. Six themes were evident: having long-term impact, achieving specific results, acting with fiscal integrity, deliberating effectively, preserving the institutional influence of the legislative branch, and acting with political courage. North Carolina lawmakers are not proud of themselves or the institution when they think that legislative action lacks these qualities.

North Carolina's state legislators conduct the people's business in this modern, well-landscaped building. Many of them are concerned about how their institution is standing up to pressures being felt in state legislatures nationwide.

Raleigh News & Observer

Having Long-Term Impact

Lawmakers assess long-term impact by the General Assembly's ability and willingness to craft and enact legislation anticipating future needs and making positive changes that will address state issues for years to come. The following comments reflect this kind of thinking:

I think the legislature's best moments involved enacting multiyear long-term programs that address broad policy problems . . . [like] the Highway Trust Fund, the Basic Education Program, the Public School Accounting System, and the State Government Performance Audit.

The legislature does a good job at making small adjustments in a variety of areas as needed. However, as a body, we are not very good at strategic long-term planning . . . As a result, if we do long-term thinking, it's usually because some outside interest group has done the heavy lifting, like the Public School Forum with the bond issue.

Achieving Specific Results

By "specific results," lawmakers mean legislation that solves a problem for a group of their constituents, their district, their region, or the state overall. For example:

Something else that I was even prouder of was legislation to help thirty-nine low-performing schools in a pilot effort for the ABC Program [North Carolina's trend-setting school accountability and incentive system, adopted in 1996] . . . We gave these schools additional resources to upgrade . . . The schools improved dramatically, and this led to the adoption of our statewide testing and improvement programs, that have now become nationally recognized and emulated.

Sometimes the results are not good. This produces an opposite reaction:

The legislature currently spends very little time looking at the effectiveness of programs [and] establishing processes of accountability, indicators of results, etc. Legislators seem

to be more interested in getting things done quickly, rather than assuring they are done well.

Acting with Fiscal Integrity

Fiscal integrity is the third criterion that lawmakers use to evaluate the effectiveness of their work:

I think, on the other hand, despite our current budget problems, we have done well to keep our taxes reasonable, including property taxes, corporate taxes, and personal income taxes.

In general, I feel proud of the legislature when we are working to make our state a better place, but we have to make do with what we have. We have to maintain fiscal integrity.

I think we have moved down a path where there is a lack of financial integrity. I think we're going to be paying in the future for some of the decisions we've made in the last three years. The questionable choices include off-budget financing, capital facilities certificates of participation, retirement-system funding choices, etc.

Deliberating Effectively

Legislators take pride in the quality of deliberative processes and the quality of colleagueship. They typically feel proud when they are able to reach a good compromise among opposing views, when they fully examine an issue and feel confident in the result:

I was most proud when we were able to achieve a consensus on important issues among those who formerly had held opposing views. One example of this was getting environmentalists and municipalities to agree on the terms of eligibility for the 1993 water bonds.

I was proud of the legislature when it actively examined the pros and

cons of a proposal . . . We did a good job when we created the structured sentencing policy, for example. We took a long time to do that. We had a committee that worked hard to create guidelines that now all the judges use.

When they cannot reach agreements, lawmakers are critical of themselves:

The legislature right now is a bit dysfunctional. We are not a problem-solving body right now. The House only can act when everyone agrees.

My greatest frustration was when we were doing welfare reform in 1995. In that case you had people negotiating about something they did not understand. It was ideological versus fact-based, so there was negotiation by stonewalling.

Preserving the Institutional Influence of the Legislative Branch

Legislators and staffers also can be sensitive to the institutional role of the legislative branch of government as a whole, and protective of its position in relation to the power of the governor, the judiciary, and other outside influences. They are proud of the body when they think it asserts its constitutional functions effectively and forcefully:

I tend to be proud of the institution when they stand up as a body—for example, when they faced Mike Easley down on the Tobacco Settlement when he was attorney general. He was trying to impose a take-it-or-leave-it allocation of the money on them.

We also had a very difficult problem with [the Department of] Transportation [DOT], which had just gone through a bid-rigging scandal. DOT considered itself a kind of sovereign country and would not cooperate . . . We had subpoena power, and we used it. We wound up passing twenty new statutory provisions to change the way DOT does things, and we also ultimately cleaned house over there, right up to and including the secretary.

But when the legislature does not stand up for its role, some respondents are upset:

It seems to me that in the last three years, the legislature has allowed the governor to eviscerate its constitutional authority with respect to the finances and budgeting for the State.

The legislature is not functioning at its best when it is unduly influenced by the governor, lobbyists, or other interests, [when] it does not take the time to fully explore a measure, and when its members do not protect the legislative institution and its processes vis-à-vis the executive or judicial branches of state government.

Acting with Political Courage

Although many people think that being a legislator is all about being reelected, lawmakers tend to be proud of the institution as a whole when they think that it shows political courage instead of bowing to political expediency. For example:

It was particularly pleasing to me when the legislature, as a whole, supported actions that were not especially popular back home, such as tax increases during tough financial times and capping the prison population temporarily while we worked our way out of a lawsuit.

The insurance companies were threatening to leave the state if we did not give them everything they wanted, which was to be able to stop writing insurance for daycare centers and other public facilities. Their tactics were very heavy-handed, but we faced them down and protected the public interest. We also had a situation where we decided to franchise the wine industry, like the automobile industry. I was accused of all sorts of wrongdoing by the opposition in their attempt to block it. We went ahead nevertheless.

Legislators are sometimes critical of colleagues who take the easy way out and put politics over substance:

I have a problem with colleagues who try to legislate by sound bite. Some people push a personal agenda in this way. They try to get

things passed that are popular short-term but may not be good for the state long-term. Often the legislation is based on misinformation that is not questioned in the rush to get something popular done . . . [T]his costs the taxpayers money.

In addition to criticizing their colleagues' legislative tactics, some lawmakers think the trend toward greater partisanship is bad for North Carolina:

Now we have hand-to-hand combat around partisan interests. We have people splitting into groups and pitting those groups against each other. It has become a detriment to the state that our decision-making process is so divisive.

> **Spending on legislative campaigns has doubled since 1996, now exceeding $30 million.**

Most, but not all, lawmakers think that the increased level of political and ideological conflict is a problem for the institution. An alternative view is that conflict is part and parcel of the business of legislating:

Inevitably, when one legislator or group of legislators feels "proud of" a majority action that advanced certain goals, other members feel defeated and "not so proud." So the simple answer to your question is, I personally felt "proud" when I was able to convince the majority to support an action that I believed in strongly and worked hard to promote. However, my victory was often someone else's defeat—that's the nature of the institution.

Trends Influencing the Effectiveness of the North Carolina Legislature

We asked those we interviewed to describe the trends they saw affecting the legislature over the past twenty years or so. They cited a wide range of interrelated political, financial, ideological, and technological trends. The

consensus was that the General Assembly is more divided, more partisan, more driven by campaign financing needs, and more vulnerable to special-interest influences than it was in the past. These forces produce a more stressful institutional environment for so-called citizen-legislators. In short, the General Assembly is tracking trends similar to those in other legislatures across the country (for a graphic presentation of the trends, see Figure 1).

An Increase in Two-Party Competitiveness

One major change in the legislative landscape over the past two decades is the increase in competitiveness between the Democratic and Republican parties. Control of the General Assembly by the Democratic Party began in the late nineteenth century and continued uninterrupted until the early 1990s, ending in the so-called Mavretic revolution. Representative Joe Mavretic, a Democratic member of the House from Edgecombe County, led a successful rebellion against long-time speaker Liston Ramsey and the Democratic leadership. The Mavretic coalition won control of the House with support from Republican legislators. For the first time in many years, the Republicans participated in a governing coalition. In the mid 1990s, the Republicans won control of the House outright for the first time and, during the 2003–4 session, participated in an unprecedented joint speakership of the House. Since that time the General Assembly has reverted to Democratic control (in the current session, 31–19 in the Senate and 68–52 in the House.)

More Heavily Contested and More Expensive Campaigns

The return of Democratic Party dominance, however, does not mean a return to a low-competition environment as measured by total campaign expenditures. More than $30 million, a new record, was spent in 2006 on General Assembly elections, double the amount just ten years earlier.[4] For campaign expenditures by winning candidates in elections over the last fifteen years, see Table 1.

Campaigns are much more expensive than in the past because of the increased

Political Trends
- Increase in party competitiveness
- More ideological national political culture
- Increase in playing to media

Financial Trends
- Rising cost of media
- Increase in campaign expenses
- Increase in need for fund-raising

Shifts in Power
- Increase in power of lobbyists and interests they represent
- Increase in power of top leadership people (speaker, president pro tem, chairs of Rules Committees, etc.)

Structural Changes
- Single-member districts
- Redistricting to protect incumbents
- More homogenous districts
- Governor getting veto
- Governor getting second term
- Top legislative leaders serving multiple terms

Impact on Deliberations
- More ideological membership
- More rigid party discipline/lines
- Less incentive to compromise, more political posturing
- More contentious sessions
- Less civility, comity; more frequent breakdowns of decorum

Session Impact
- Fiscal deadlock, longer sessions
- More run-on bills, special-projects legislation
- Marginalization of study commissions
- Committee chairs yielding more decisions to leadership, less accountable

Personal Stresses
- More constituency access via e-mail, increased demands
- Fund-raising demanding more time and energy
- Length of sessions detracting from family, business
- Low legislative pay/ high time commitment, limiting who can run and serve

Impact on Legislating
- More stress on legislators, turnover
- Less institutional memory
- Less long-term strategic legislation
- Less program evaluation/oversight
- Erosion of power vis-à-vis governor

emphasis on media-based campaigns and the rising costs of media:

Some factors fueling the influx of money into the system include the rise of two-party competitiveness, the need for media expenditures to reach people in urban areas, and the quasi-monopolies that exist in media markets, making media very expensive.

We have become a two-party state. The special interests have become more organized; they try to pin you down with questionnaires. National politics has spilled over into state and local politics: negative campaigning, obsession with the media, consultants, focus groups, ads, etc.

There is the trend toward two-party competitiveness. This causes people to look for issues to run on and to differentiate themselves from the other party. Everything is now a contest, and issues are less likely to be decided on their merits. There is too much looking ahead to how a given issue can be used in a thirty-second sound bite by their opponents.

Increased Influence of Campaign Contributors

According to lawmakers, the big beneficiaries of this and related trends are candidates with the resources to finance political campaigns. Because there is a greater need for campaign money, there has been an increase in the influence of lobbyists, whose clients are willing to contribute, and moneyed interests, which provide the large contributions needed to run modern political campaigns:

When the [Raleigh] News & Observer attacked the hog lagoons . . . , the hog industry flooded the legislature with money. This got the attention of other special interests, and they tried the same tactic thereafter. The net result of this is a great increase in the power of the special interests.

Now everybody has their own PAC, so we have a collection of special interest groups pushing their point of view on the legislature on a variety of issues, and it is harder to hear the people's voice in all this.

Table 1. **Spending by 170 Winning Candidates for the North Carolina General Assembly**

Election	Total Spending	Average Spending
1992	$ 3.9 million	$ 23,000
1994	4.9 million	28,800
1998	11.9 million	70,000
2002	17.2 million	100,000
2006	22.8 million	134,000

Source: Bob Hall, director, Democracy North Carolina, personal communication, March 29, 2007. Amounts in absolute dollars. Hall explains the results as follows:

The rapid rise in legislative campaign fund-raising and spending began after the 1994 election, when the GOP demonstrated its viability, captured the state House majority, and reached campaign fund-raising parity with House Democrats for the first time in modern history. House Republican candidates actually outspent House Democratic candidates in the 1996 election and held on to the majority for another cycle. After 1994, Democrats in the Senate and then in the House got much more aggressive about coordinating and escalating their fund-raising. The "arms race" took off.

More Unified and Polarized Caucuses

Lawmakers report that this increased influence has, in turn, led to an increase in the leverage of key leadership positions in the House and the Senate. The recent speakers of the House and presidents of the Senate could raise substantial sums of money from lobbyists, professional and corporate associations, and other groups and channel those funds to party loyalists. When leaders in both chambers hold substantial campaign funds, they have the means to enforce party unity in the caucuses. This further polarizes already existing partisan and ideological divisions between the party caucuses. Lawmakers are aware of and concerned about this practice:

There are more lobbyists than ever before, and because they direct increasing amounts of funds to the leadership and members for their campaigns, their influence has increased.

The rise of campaign expenses is another disturbing trend. It now costs a quarter of a million dollars to run for the Senate and $100,000 to run for the House. As a result, members are more dependent on the speaker, who has an advantage in raising funds. [Authors' comment: Costs have increased even more since this statement was made in 2004.]

More Homogenous Districts

Some respondents think that the legislature's creation of single-member

districts in 2002 has been a boon for building coalitions:[5]

Single-member districts have created the possibility and the necessity for people to address issues statewide because you have to build a coalition of counties to get things done. Multimember districts often meant people could duck issues.

But most of those interviewed say that single-member districts, combined with computer-based redistricting designed to protect incumbents, have produced members with more homogenous constituent bases and a more narrow set of interests to represent. This has lessened the incentives to seek middle-of-the-road solutions:

Another part of this is the redrawing of legislative districts along partisan lines, combined with single-member districts. With the computer technology available, you can now draw a district with reasonable assurance it will vote however you design it to vote. This leads to narrowly defined interests within districts.

Single-member districts and big-money campaigning make you more vulnerable and work against statesmanship because you have to please your supporters more consistently . . . Now "checking with the people" is often more related to assessing the impact of

... than ... fund-raising than ... ... constituent ... ... the broader sense.

... interest may also make it hard to see how a statewide per-spective is required to solve certain problems, and how legislation that does not directly benefit the predominant demography of your district might deserve your support. When everyone votes on a narrow what's-in-it-for-me basis, then the state as a whole is less likely to be served effectively.

Greater Diversity of Perspective

Some lawmakers welcome the diversity of viewpoints that a genuine two-party system brings to the legislature:

With a two-party system, more people have been involved in the leadership of the General Assembly. This has led to a greater talent pool being available from both parties.

Having a real two-party system is a big change. We've learned that we have to work with people on both sides of the aisle . . . , and [having two parties] continues to . . . bring more [new] people on. And I think that's good because people from different parts of the state, and people who are versed in different areas of what we do here [are more involved in the legislative process].

Having two parties probably makes things a bit more balanced. Now you've got diversity in thinking. If you don't have any checks and balances, you get caught up in a routine—you get into a box, and you don't want to hear other views. It has made for a better deliberative-type process.

More Political Posturing and More Cross-Party Animosity

Other lawmakers report that there is more political posturing within each body and between the House and the Senate, designed to attract media attention and to get positioned for an upcoming election. This polarizing tendency on the floor of the General Assembly and within the caucuses has made positive cross-party relationships

> **Positive cross-party relations are hurt by a desire for more media attention and by higher levels of partisanship.**

between legislators more difficult. Some of those interviewed say that considering legislation on its merits is more difficult because of the increased "noise" of political jockeying, positioning, and symbolic politics:

Sometimes we get so bogged down in partisan roles [that] people dig their heels in and forget who they are serving. Sometimes people will believe in a bill but vote against it because of the party.

There is a strong trend away from civil discourse and debate and prob-lem solving, toward "demagoguing" issues.

Technology has allowed public policy to be driven by national-level partisan thinkers and tacticians. The agenda now is on the Internet. If I want to know what the Repub-lican Party or the liberal Democrats are going to be talking about next year, there are several websites that I go to from which I can [get a pre-view of what they will be saying]. Legislators tend to go to those websites, you know. As a result, we have a group-think process, con-nected to national politics . . . You just go [to the Internet site], print it off, and introduce it. That is a huge change.

Several lawmakers report that the social fabric of the institution is fraying as a result of this partisan noise:

There are critical trends toward fractionalization in the legislature, and the level of animosity has risen between and within the caucuses.

I think the power of friendship is underappreciated as part of the leg-islative process—friendship even across party lines. People will sup-port your bills even if they disagree with you politically, if there is that friendship. Sometimes this aids the

legislative process, which would otherwise be stymied. For example, I have been a close friend of [a member of the other party] for many years, despite our vast pol-itical differences. Now, however, things have become so partisan that these friendships are harder to form.

The Impact on Legislative Effectiveness

Most lawmakers we interviewed think that, in many cases, the trends just discussed are hurting the legislature's ability to live up to the standards it sets for itself. Our respondents identify some additional problems, including voter apathy, legislator stress and turnover, and the diminution of the body's repre-sentative makeup.

Decreased Ability to Plan for the Long Term

Ability to plan for the long term appears to be one of the most important criteria that some lawmakers use to assess the ef-fectiveness of the General Assembly. In the opinion of many lawmakers, the cur-rent trends do not favor taking a long-term view of solving the state's problems:

There is too much emphasis on the two-year election cycle. We have a situation where Medicaid, education, and prison spending continue to grow and crowd out all other parts of the State budget at the same time [that] our tax revenues are declining because of the loss of our manufac-turing base. No one seems to be ad-dressing this basic set of issues . . . We lack a long-term plan and vision. We can foresee the problems, such as the retirement of the baby boomers, but we don't seem to have a way to address these problems.

We have . . . sacrificed employee salaries for the last several years. I do not think that legislators are as concerned as they should be with the long-term deterioration of the State workforce. We also have not invested in State property, construction, and IT [information technology] as we should. [Authors' note: This comment was made in 2004. In the 2006 legislative

session, the legislature passed the largest pay raise for state employees in several years.]

Everyone has a short-term, quick-fix perspective—that is, "What can I do in two years?" This is not a good thing. We have not used the opportunity of the budget crunch to make good decisions that create more efficient government and programs.

Less Effective Deliberation

The net result of these trends, our respondents say, is more heat and less light coming from the combustion of opposing views on the floor of the chambers:

Even though there have been longer sessions and budget crunches, the increase in partisanship emerges as the major trend affecting legislative performance. The battle is often about symbols and images rather than substance and policy.

Because there is more parity among the parties, there is more discussion on legislation in the chambers. Unfortunately, a lot of this discussion is purely partisan in nature and does not illuminate the issues in any useful detail. Too often it is a restating of philosophy.

The long sessions also crowd out the study commissions, which did a lot of background work for the committees. This leads to more bad legislation, since things are no longer sent back for study. Now a bad bill can [be passed by committee and] gain greater visibility if the committee chair wants to curry favor with someone.

Increased Difficulty in Maintaining Fiscal Integrity

Some see the legislature as stalemated by an ideology-based deadlock between resurgent Republicans, who are eager to reverse what they regard as decades of liberal policymaking, and Democrats, who are increasingly upset over what they see as a failure to address urgent public needs. This stand-off has led to short-term decision making by the legislature and has exacerbated the legislature's inability to plan and problem-solve for the long term, or play an assertive role in government vis-à-vis the executive. These trends and conditions perceived by legislators and others have, in their opinions, given rise to a concern for the state's long-term financial management:

The public continues to make demands for services but resists paying taxes. The representatives try to respond by shifting burdens to the localities and postponing huge tax increases or service cuts. In the past, the staff could say to committee members that we don't have the money to do something. This would be accepted as fact. Now they will use any stratagem to get their expenditure in, regardless of the cost to future generations. They will use federal grants to pay salaries (which then become a continuing state

Lawmakers think that the legislature's deliberations have become more contentious and partisan, generating much heat but little light.

Takaaki Iwabu / Raleigh News & Observer

The good news: Information technology gives citizens easier access to legislative information and faster ways to reach their representatives.
The bad news: Information technology speeds up legislative work and puts more demands on staff and legislators.

obligation); they will put things off budget (but which still have to be paid for); they will borrow in surreptitious ways that increase the State's debt. Ultimately, if this trend continues, the State will lose its favorable bond ratings.

Since the early 1990s, the legislature has ceded its authority to control spending to various groups. For example, the University won the right to issue self-financing revenue bonds; the Rural Center has gotten $20 million to give out on special projects; the governor [has received] a similar amount for education, etc. . . . So one big trend is that the legislature has given up a lot of the fiscal control we used to exercise. I do not think this will ultimately prove to be a good trend.

Public Disenchantment with the Political Process

Because of opposing ideological tendencies in tax and spending policies, there is an increase in partisan contentiousness with regard to the budget. The partisan contentiousness in turn leads to longer sessions and more disenchantment among the public:

This sets up a vicious cycle for our democracy. Politicians promote false expectations about what they can achieve, people are inevitably disappointed, leading to disenchantment . . . , and therefore those left involved tend to have the more extreme views, which feeds the partisanship and shrill exchange.

It is the one-upmanship of partisan posturing that does that—a power frenzy, so to speak, sometimes just for power's sake. The people are the losers when this happens, and it discourages good candidates from running. All that squabbling causes the legislature to look petty and the public to be cynical.

Increased Stress on Legislators

Factors besides longer sessions have led to increased demands and stress on legislators and staffers. Although information technology has increased access to information and made it easier for the members of the public to contact their representatives, it also has speeded up legislative work for legislators and staffers alike and added huge demands:

Information processing has accelerated to the point where it has become absolutely mind-boggling. We process between 500 and 1,000 pieces of information every week. If we were depending on fax and phone, this would be impossible.

The increase in technology has been important, but it has been a double-edged sword. I can now do better analyses and turn information around quicker, but expectations have also gone through the roof.

The time that is needed to do something is very compressed. Now we can create a committee substitute bill in an hour or so. That was unheard of several years ago.

Technology has also had the effect of making things go faster. We say, "We will do this now and then fix it later." Everyone expects a quick turnaround, so there is less time to think—this is a bad trend.

The Decline of the Citizen Legislature

The stress factor, the increased competitiveness and cost of campaigns, the increased polarization of views and a decline in civility in the bodies, and continuing low pay have led many to wonder if the day of the citizen legislature is close to an end. Today, few working people and those raising families can

afford the time or the lost income to be part of the legislature:

With the session extended as long as it is, and the pay so low, some of the best people cannot give their time to the legislature because of other commitments.

With legislators making only $12,000 to $13,000 a year, you cannot be a poor person and serve. You must be a retiree or a wealthy person.

These factors in turn lead to a decline in representation of some parts of the electorate:

The longer sessions have meant there will be fewer farmers and small-business people serving. These groups will lose out because they will not be represented. If you had fewer retired or rich people in the legislature, you would have a different perspective on the process.

There are fewer and fewer citizen-legislators who have young families and have jobs and active businesses. There are more people who are retired or close to it.

We now have fewer people in the legislature who hold down full-time jobs. We have more retirees. We have fewer young people and women under forty-five.

Decline in Legislators' Deliberative Capacity

Some fear that this set of circumstances has led to a lower "caliber" of member —fewer lawyers and fewer real leaders:

It is increasingly difficult for attorneys to serve and to keep up with their law practices. As a result, the ranks of lawyers in the General Assembly have been decimated . . . Lawyers are trained in civility. It is part of their professionalism . . . That civility has declined somewhat. You also miss that training in many instances relative to lawmaking. Partly as a result of this, I think the caliber of the average legislator has declined.

There was a time when the legislature drew more of the state's

talented leadership than it does now. Several decades ago, you had, in general, more impressive people serving than now.

Decline in Institutional Effectiveness

Some lawmakers believe that a variety of related and independent factors have led to a decline in the relative power of the General Assembly and its institutional effectiveness. They say that increased membership turnover has damaged institutional memory. They fear that continuation of the partisanship trend may eventually lead to the replacement of nonpartisan staff with partisan staff. General Assembly staffers are a professionally trained and politically neutral group of analysts—focusing, for example, on research, fiscal research, or bill drafting—who are managed by staff directors employed by the legislature. In recent years the speaker of the House and the president pro tempore of the Senate have hired their own staff assistants.

There is more turnover, and long-time legislators are leaving due to retirement.

We . . . have staff aging out as well. So we are getting younger people with strong credentials but little experience.

I think we may be headed for a full-time legislature and partisan staff. I am not in favor of the partisan staff because the nonpartisan staff we have does such a good job staying neutral.

Another trend is increased turnover. We have more new members than previously. We have three new chairs on the Senate side and eight on the House side. So institutional memory is lost.

Right now the legislature and state government in general are somewhat weaker because we do not have people in charge who really understand the budget process. We have a whole new crew.

Many also think that the balance of power has shifted against the legislature. In 1977 the constitution was changed so that the governor could succeed himself or herself. James B. Hunt Jr. was the first governor to be reelected, in 1980. In 1997 the constitution was changed to give the governor veto power over most types of legislation. (For a timeline of these and other structural changes that have affected the legislative culture, see the sidebar on this page.)

Thirty years ago the legislature was the dominant branch. The leaders of the legislature, especially the Senate, were very influential in setting state policies. Now you have a governor who can succeed himself and has a veto and considers himself the chief State policy leader.

Institutionally, the legislature, with 170 members, is at a disadvantage relative to the executive, which can be much more focused on specific situations.

Events Relating to the Concentration of Power and the Growth of Two-Party Competitiveness in the General Assembly

1977	Constitution is amended to allow governor to succeed himself or herself for second term.
1977–80	James B. Hunt Jr. serves first term as governor.
1980	Carl J. Stewart becomes first speaker to serve more than one term (1977–78, 1979–80).[1]
1981–84	Hunt serves second term as governor, succeeding himself.
1985–88	James G. Martin serves first term as governor (second Republican since 1901).
1988	Liston B. Ramsey becomes longest-serving speaker (1980–88).
1989	Senate president pro tempore is empowered to make all committee appointments.
	Democrat Josephus L. Mavretic defeats Speaker Ramsey with Republican support. Republicans share in leadership of committees (1989–90).
1989–92	Martin serves second term as governor.
1993–96	Hunt serves unprecedented third term as governor.
1995–98	Republicans control House for first time since 1894.
1997	Governor receives power to veto most types of legislation.
1997–2000	Hunt serves fourth term as governor.
2002	Single-member districts are established.
2003	House elects Democratic and Republican co-speakers for first time.
2006	Speaker James B. Black completes tenure equaling Ramsey's in length (1998–2006).
	General Assembly passes lobbying and ethics reforms, limiting lobbyists' campaign contributions, entertaining.
2007	Marc Basnight begins eighth term as Senate president pro tempore, remaining longest-serving state senate president pro tempore in country (1992–2007).
	Black, no longer speaker, resigns House seat.
	House changes rules, limiting methods previously used to insert last-minute changes in bills.

Note

1. Presidents pro tempore of the Senate had been serving two terms for several years to "balance" the Lt. Governor's four-year term as president of the Senate.

Summary and Conclusion: The General Assembly at a Critical Crossroads

Our study suggests that the North Carolina legislature, like the legislatures of many other states, is undergoing change and stress. Furthermore, members and staffers of the General Assembly experience this stress on an individual level. The change and the stress make it harder for the General Assembly to plan for the long term, to solve specific problems, to maintain a membership that—occupationally, at least—mirrors North Carolinians generally, and to act more independently of influences from lobbyists, monied special-interest groups, and the executive branch.

These are not judgments of the legislature from some outside, uninformed group. These are the judgments of legislators themselves. The symptoms are problematic and serious and deserve thoughtful attention. Former State Treasurer Edwin Gill used to observe, "Good government is a habit in North Carolina." Do these current habits (or norms) of the North Carolina General Assembly identified by lawmakers in our study represent good government?

What can be done? There is a quandary. The legislature is a sovereign branch of North Carolina Government: no outside force can change it, short of a major revision of the constitution. So it may be time for the North Carolina legislature to take a fresh look at itself as an institution.

The General Assembly, we think, is at a crossroads. Will it be business as usual or renewal? If the opinions and the concerns of the lawmakers we interviewed are any indication, renewal is the strong preference. Renewal in this case means doing all the things that lawmakers told us make our legislature an effective institution. To recap, these include the following:

- Enact complete, comprehensive, strategic statutes that contain solutions to specific situations and needs instead of offering an expedient, political quick fix

- Create strong initiatives for legislative oversight and program evaluation to ensure that legislative solutions are effectively implemented

- Enact statutes (especially spending and financing laws) that ensure the highest levels of fiscal responsibility, accountability, and integrity in the face of a political process that is increasingly competitive and money driven

- Set new standards for Senate and House floor and committee debate and discussion, and build in practices that result in more informed decisions and creative solutions and substantially reduce partisan bickering

> Change is needed to put the *citizen* back in citizen-legislator.

- Exercise the legislature's constitutional prerogatives with respect to the executive branch consistently, clearly, and unambiguously

- Ensure that programs and services containing essential administrative and technical support are available to members to minimize stress associated with their work

- Consider how to remove the barriers that, in effect, currently narrow the range of those who can serve in the legislature, by reviewing the salary and the compensation provided, the level of staff support, the demands of the session calendar, each legislator's full- or part-time status, and other issues

Effecting this renewal and redirection will require a healthy serving of an attribute of effectiveness that lawmakers told us they admire: political courage.

As an institution, the legislature has shown that it can change with new expectations and demands. Over the last twenty years, it has authorized significant increases in professional staffing and provided greater access to new technologies for all members. It has instituted its own orientation for new legislators, and some members participate in an expanded orientation program sponsored by the Institute of Government. In 2006 it adopted campaign finance reform, restricted lobbyists' activities, and established a committee to audit government performance. In 2007 the House reformed its rules to correct some past practices.[6]

It remains to be seen whether these adaptations will keep pace with the pressures that concern the lawmakers we interviewed, such as the norm of quick-fix, run-on legislation; the decline in decorum and comity among members; the increase in partisanship; the concentration of power; and the unremitting demands and influence of perpetual fund-raising.

From our interviews with a cross-section of past and present lawmakers, we learned not only of these concerns but of their genuine interest in restoring the conditions and the norms that promoted "doing the right things." Perhaps another study should survey *all* lawmakers to determine if similar opinions, today, extend to the whole group. Clearly, continuing business as usual will not promote renewal in the direction of increased effectiveness of the North Carolina General Assembly. This is why we find the lines of Robert Burns's poem as relevant today as in 1796. We hope that the members of the General Assembly will see themselves as others see them and act decisively and effectively.

We are convinced that if the legislators seriously undertake a renewal initiative and follow through on it diligently, they might improve their deliberative processes, strengthen the legislature's ability to address contemporary challenges, and restore a sense of pride in the institution among lawmakers themselves.

To achieve this goal, we join with the fifty-three legislators, staffers, and lobbyists we interviewed, who would invite all lawmakers to consider the admonition of the North Carolina State motto: "To be, rather than to seem."

Notes

1. *See* Alan Rosenthal, "The Good Legislature," *State Legislatures,* July/August 1999. Available at www.ncsl.org/programs/pubs/~99good.htm. Long a leading scholar on U.S. state legislatures, Rosenthal argues that good legislatures exhibit the following characteristics: effective sharing of power with the governor; reasonable representation of, accessibility to, and responsiveness to the population they serve; an absence of destructive partisanship; reasonable norms of participation for minority and lower-status

Rushing to push bills through as a legislative session ends, committee members congregate on the Senate floor. Will the General Assembly continue doing business as usual, or will it opt for renewal?

and what kind of training and support was needed to promote better legislative leadership for new and experienced legislators. However, the three opening questions produced such striking responses that they have become the focus of this article:

- When were you *most* proud of the legislature? What do you see as the high points of your time with the legislature?

- When were you *least* proud of the legislature? What do you see as the low points of your time with the legislature?

- What are the major trends affecting legislative performance?

Either an executive summary (18 pages) or the entire study (194 pages) may be obtained by e-mailing dkiel@mindspring.com. This article is being published with the permission of the Z. Smith Reynolds Foundation, Tom Ross, executive director. However, there has been no prior review by the foundation, and we take full responsibility for the information and conclusions provided.

4. *See* "Spending Change," Editorial, *Greensboro News & Record*, November 10, 2006.

5. The General Assembly created single-member districts partly in response to court decisions holding that multimember districts tended to discriminate against minority voters.

6. In 2006 the General Assembly passed the State Government Legislative Ethics Act (SL 2006-201), which among other things sets limits on how lobbyists can contribute to and entertain legislators. For a full description, *see* www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2005&BillID=H1843. Also in 2006, the General Assembly authorized a general audit of all state government agencies and established a committee to carry the audit out by February 1, 2008. For details, *see* www.ncga.state.nc.us/committeefrontpages/gpacii/index.html. Early in 2007, the House passed changes in its rules, reforming key processes such as making committee appointments by an explicit deadline; eliminating the practice of assigning key members ("floaters") to any committee, at any time; requiring conference committee reports to be held over to the next legislative day; eliminating substantive "special provisions" in appropriations bills; and ensuring that any amendment that clearly is unconstitutional is ruled "out of order." *See* H.R. 423, 2007 Gen. Assem., Reg. Sess. (N.C. 2007), available at www.ncleg.net/house/documents/HouseRulesHB423.pdf.

legislators; effective deliberative processes that allow for influence, negotiation, and compromise among a variety of interests; an effective budget process; and monitoring of the effects of the laws they pass. These are precisely the characteristics that lawmakers in our study report as being under pressure in recent sessions of the North Carolina General Assembly.

In his well-received 1997 book *The Decline of Representative Democracy* (CQ Press), Rosenthal argues that a national transformation is occurring in legislative cultures, characterized by the following trends:

- Legislators are expected to process more information and respond more quickly to the public.

- Politics has become more partisan, and more legislators are looking beyond the state legislature to higher office. These and other factors make compromise and problem solving more difficult. The trend is exacerbated by redistricting to strengthen homogenous, narrow interests and maintain politically safe districts for incumbents.

- Legislators must spend more and more time in fund-raising for expensive media campaigns. This increases their dependence on special interests and legislative leaders who are effective at raising campaign funds.

These trends track closely those named by the sample in our study. That suggests strongly

that changes in the North Carolina General Assembly are part of a national pattern afflicting state legislatures.

2. *See* Jim Morrill and Mark Johnson, "N.C. House, Senate Approve Ethics Reform; Some Say Sweeping Bill Sparked by Scandals Doesn't Go Far Enough," *Charlotte Observer,* July 28, 2006.

3. We conducted the study on behalf of the Z. Smith Reynolds Foundation in fall 2003 and winter and spring 2004. We made detailed summaries of all interviews and sent them to those interviewed for verification. The sample was designed to represent a cross-section of legislators in terms of race, gender, political affiliation, and length of time in the legislature, and to include past and present leaders as well as new members. We also included interviews with knowledgeable staffers and lobbyists and, in one case, a well-respected independent observer of the legislature. We have used the term "lawmakers" to describe those interviewed. Occasionally, when the reference is to legislators specifically, we have used "legislators" or "members" to describe those whose views are being described or quoted.

One of us, Tom Covington, proposed the study to the Z. Smith Reynolds Foundation in order to conduct an assessment of legislators' needs and interests in leadership training beyond the orientations already provided by the General Assembly itself and the Institute of Government. Most of the nine questions we asked had to do with determining how the respondents defined legislative effectiveness

Are You @?

Brenda Currin

e-commerce, e-business, e-learning, and now e-government. Everyone has a website. It's a twenty-first century version of hanging out your shingle. But there's more to e-government than having a website. It's been only thirteen years since the U.S. government went online. In that short time, and often riding on the coattails of commercial applications, governments have learned to use their websites as a tool for administering programs, providing services, and engaging citizens in government and community. Those online capabilities are the "e" in e-government.

For many smaller governments, your first website probably was the baby of an innovative employee, willing to take it on as an extra assignment. Now that website has grown, and it represents a significant investment of time and tax dollars. How can you be sure it's working for you? How can you be sure it has value to your staff and your citizens?

A simple analysis of your site will give you some clues. It takes no expertise—no surveys, no focus groups, no statistics. Those tools may be helpful later, if you need to make changes. But for starters, use the questions presented in the analysis tool accompanying this article to look at your site and estimate for yourself how well it achieves six key goals of e-government:

- Focus on people
- Focus on service
- Usability
- Accessibility
- Effective content management
- Costs and benefits

The author is a professional writer who works with local governments and nonprofits to produce marketing and education materials that are easy to use and understand. Contact her at b_currin@currin.biz.

In the Blink of an Eye, Historically Speaking

"e" is everywhere, but it's still a newcomer. Big users of the Internet can easily forget just how recently it swept in and changed everything. Think back twenty years, to 1987: chances are you hadn't even heard of it. Lots of Apple IIe's and 286s were around, but nothing was networked. Four years later—1991—the Internet was the newest thing, but it was all text. It allowed limited access to university and government resources from a distance.

Then www—the World Wide Web—hit like a tidal wave. Suddenly, individuals, schools, and small businesses could access and publish information through graphic websites on the Internet. If you were in the corporate world, you may have gone online a little earlier, but for most people, the Internet entered the mainstream of American life only 10–15 years ago.

Look at a comparable technology revolution: The automobile first entered the mainstream of American life in 1913 when Ford introduced the moving assembly line to mass-produce cars. The next fifteen years were filled with innovations that Americans today take absolutely for granted—stop signs, traffic lights, four-wheel brakes, car heaters, safety glass, numbered highways. Over the last fifteen years, the Internet has gone through comparable developments in speed, capabilities, and the role it plays in people's lives.

When anything changes that fast, it's no surprise that some individuals and organizations are running a few years behind the curve. But with the Internet, a few years behind is a big gap. Closing that gap requires leadership and a commitment of human and financial resources. At the same time, it offers an interesting opportunity to benefit from the experiences, successes, and failures of others. You also can refer to your own experiences using Web resources to help

decide what works, what's important, and where to focus your investment.

What Makes Government "e"?

The Internet broke out of its government/Defense Department/university incubator after the World Wide Web and graphic websites hit the scene. Corporations and businesses have led the way in developing new online capabilities: buying and selling, teaching and learning, creating spectacular visual impact, providing all kinds of services. In a short time, e-commerce has completely changed how people do business, locally, nationally, and internationally.

e-government uses the tools of e-commerce to enhance delivery of government information and services to government employees, citizens, and government's business partners. e-government has been slower to develop than e-commerce but is now a strong presence at national, state, and local levels. The U.S. government went online in 1993. Now people can file taxes, apply for jobs, and access information and services from all government agencies online. By 2004, ninety-eight percent of cities surveyed across

the United States had some kind of website, and 77 percent had websites that allowed the public to conduct online transactions and receive online services.[1]

When local governments first start, your websites often are not much more than online brochures of static information. They tell who you are, introduce your departments, give phone numbers, and often present travel information or histories of your community. The next step in developing the website is to add some information about the services each department offers—hours, employees to call, and e-mail contact information. Not really "e" yet.

When you start adding forms and applications for people to download, when you start organizing information by user groups (contractors, home-owners, businesses, seniors, etc.) rather than by departments, when you start providing outside links to help people solve problems that go beyond the services you offer directly—these steps take you into the realm of "e." When you enable people to make payments for services or taxes online, when you make it possible for people to submit completed forms and applications online, when you reduce the cost of

providing services and improve the level of services by offering them online—then you are deep in "e."[2] Congratulations!

Where Are You?

So where are you on the continuum from a website about your local government to e-government? You can use the observations and questions provided in the accompanying analysis tool to evaluate your website on six of the key goals of e-government—and therefore of website design.[3] Doing the analysis should take you only an hour or two at your computer. (A few outreach questions involve talking to your staff to get additional insight, if you have the time.) If the examples offered don't apply to your community, try to think of something similar that does.

You won't answer yes to all the questions; you wouldn't want to. Some of the options overlap or wouldn't work well together. Consider the questions as an *a la carte* menu of basic "e" capabilities and functions. If you're not satisfied with your progress, the final section of this article offers suggestions and guidelines for moving your community further toward e-government.

1—Focus on People
Who will use your website, and what do they want from you?

The current emphasis in e-government is to provide services, information, and transactions that citizens want and need. Savvy web designers base design decisions on the needs of the target clientele, so they help you carefully identify your clientele—citizens, employees, business partners—early in the site-development process. Input from your clientele plays a significant role in determining the content and organization of the website.

Secretaries and receptionists can offer tremendous insight into what people want and need. What do they request? What do they call about? What do they have to come to the office for? Websites can provide a primary source of information for citizens: How do I . . . ? Where can I find . . . ? Whom do I speak to for . . . ? The history of your

Website Analysis

Part 1—Focus on People
What to Look For

___ Yes ___ No	Does your home page (the first page of your website) have links taking different groups of citizens (new residents, families, employees, etc.) to the information they are most likely to need?
___ Yes ___ No	Is some of the information arranged in a question-and-answer format?
___ Yes ___ No	Is there a Frequently Asked Questions section?
___ Yes ___ No	Can people find out what procedures to follow for a variety of common problems? Test the website: Can they find out what to do about a stray dog? How to get a building permit? How to help an elderly relative apply for Medicare? How to dispose of paint and solvents?
___ Yes ___ No	Can people find schedules and agendas for public meetings?
___ Yes ___ No	Can people review the minutes of public meetings online?
___ Yes ___ No	Can people request services online? For instance, can they e-mail someone to obtain a duplicate copy of their tax statement online?
___ Yes ___ No	Can people make comments about the website? If they make comments, do they get replies?

Website Analysis

Part 2 — Focus on Service
What to Look For

|		
___ Yes	___ No	Can people download applications for an outdoor-fire permit? A driveway permit? A business privilege license? A county or city job? A marriage license?
___ Yes	___ No	Can people fill out and submit these applications online?
___ Yes	___ No	Can people access county or city ordinances?
___ Yes	___ No	Can people access county maps? Property records? Geographic information system (GIS) information?
___ Yes	___ No	Can people register to vote online? Reserve public facilities? Order copies of birth certificates?
___ Yes	___ No	Does the website give people the option of registering for community events?
___ Yes	___ No	Can people pay their local taxes online? Their water bills?
___ Yes	___ No	Is there a clear notice that financial transactions like the foregoing are guaranteed to be secure?
___ Yes	___ No	Are privacy policies clearly announced on the site?
___ Yes	___ No	Does the website have a service that lets people request e-mail updates on certain topics?
___ Yes	___ No	Does the website include a survey or polling feature that solicits input on certain topics of public interest?
___ Yes	___ No	Can employees take care of government business online, such as filling out expense reports?

community has its place on your website, but history is not what most people need on a daily basis to run their business, get their house built, get their trash picked up, or get their kids enrolled in community athletic programs.

Assess your site on this dimension (see "Website Analysis," Part 1, on page 18).
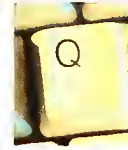
2—Focus on Service
Can people transact their business with you online?

Q Most starter websites focused on information: let us tell you about our departments and programs—where they are located, what they do, who the key staff are. It didn't take businesses long to realize they could do a lot more over the Internet than provide information. Quickly they had people shopping, ordering, and paying electronically. In the dot.com revolution of the 1990s, they harnessed the Internet as a means of providing business and shopping services to their customers.

Government services are rarely as tidy as the business buy-and-sell model. But many governments now use their websites as tools for providing at least some of their standard services. In addition to being a source of information about processes and procedures, the website becomes a source of the forms and applications needed to get permits and apply for services. It provides information about fees; it also is a means of paying those fees. People can find out about job openings or bid opportunities on the website; they also can apply for jobs or submit bids online.

A service-oriented website puts people in touch with solutions, yours and others'. Links to higher levels of government, integrated into your website, can serve as a seamless extension of your services. Your website can help the people in your community find information and make transactions that they need and want. Whether the service comes from you or from the state or federal government, your site becomes the portal for "one-stop government."

e-government services do not replace written, telephone, fax, and counter services. Many people have no access or minimal access to the Internet and online services, or they are not comfortable using the Internet to transact business. Complex cases and problems do not lend themselves to Internet solutions. Governments always will need to maintain effective face-to-face channels for providing services. But for many people who want standard, common services from government, the website offers round-the-clock information and services from the convenience of home.

Assess your site on this dimension (see "Website Analysis," Part 2, on page 19).

3—Usability
Can people find what they're looking for on your website? Is it easy to use, read, and understand?

Many factors contribute to the impact your website has on people. If they get discouraged in the first few minutes trying to get help, that's just as bad as if you had a receptionist in your front office who was rude or didn't know much about the services you provide. Creating a website that's easy to use requires, again, a focus on the people using it: What will they be looking for? What words will they use to try to get to that information? How well do they read, and what language do they speak? What kind of computer are they using, and how fast is their Internet connection?

A U.S. Department of Education study of adult literacy indicates that half of all Americans read at the eighth-grade level or lower. Unfortunately, the average readability of U.S. government websites in 2003 was the eleventh-grade level.[4] Highly educated people who write content for websites may require special training to learn to write at an appropriate level for their target audience. "Plain-language writing" now is a requirement for federal government documents and websites (though sometimes you wouldn't know that). It uses words and sentence structures that are appropriate to the targeted audience. Jargon and acronyms appear only if the target audience for that piece of information will be familiar with them.

Designing for usability also requires some understanding of how people access and use information. Your menus and links need to make sense and be easy to navigate. Organizing websites by department or agency has minimal use for citizens. They don't know which department is responsible for a given service. Instead, you should organize information by topic, interest group, keyword, or some other category that makes sense to the users of the site.

Finally, your site needs to be aesthetically pleasing. This doesn't mean it needs to have lots of "Wow" and "Cool." In fact, too much can distract from the

Website Analysis

Part 3 — Usability
What to Look For

___ Yes	___ No	Does the look of your home page give a good first impression of your city or county? What does it tell people about your community?
___ Yes	___ No	Is the home page cluttered? Does it take more than a moment to see how the front page is organized and what the options are?
___ Yes	___ No	Can people look at the menu options on the home page and decide easily which menu to click if they need to talk to the city or county manager? Get a permit for a new well? Renew a book at the library?
___ Yes	___ No	Does your website have a sitewide search tool?
___ Yes	___ No	Does your website have an index?
___ Yes	___ No	Does the website load quickly?
___ Yes	___ No	Do all the links work correctly?
___ Yes	___ No	Print several pages from your website. Do they print correctly, without cutting off the words on the right margin?
___ Yes	___ No	Is general information for the public written in short, easy-to-read sentences and paragraphs? Does the website use bulleted lists to make information even easier to understand?

Content Development versus Content Management

Content development and content management are two distinctly different processes. Both are critical in developing a successful, user-focused, service-oriented website.

"Content development" involves deciding what to include in the site. Many communities make the mistake of gathering whatever information is easily available and turning that into the content of the site. A more effective approach is market driven. It focuses on finding out from people in your community what they want and finding out from your employees what services they can offer. Content development should be a major consideration in your budget. The website, no matter how beautiful, is only as effective as the content you develop for it.

"Content management" refers to maintaining a website—adding information and keeping content up-to-date. It is one of the biggest challenges of successful e-government. Specialized software for content management makes it possible to assign individual passwords for each page on the website. These passwords give one person in each department or agency access to that unit's content on the website. The interface is very simple, so staff members don't need to learn specialized web programming software. The software allows each unit to control its own critical information and service offerings. The software also spreads the work of maintaining the website among more people without risking unwanted changes to the website's underlying programming and design. Sixty-eight percent of U.S. cities are currently using or testing speciaized software for managing website content.[1]

Note
1. National League of Cities and Center for Digital Government, *2004 Digital Cities Survey—Final Survey Report* (Washington, D.C.: the League; Folsom, Calif.: the Center, 2004).
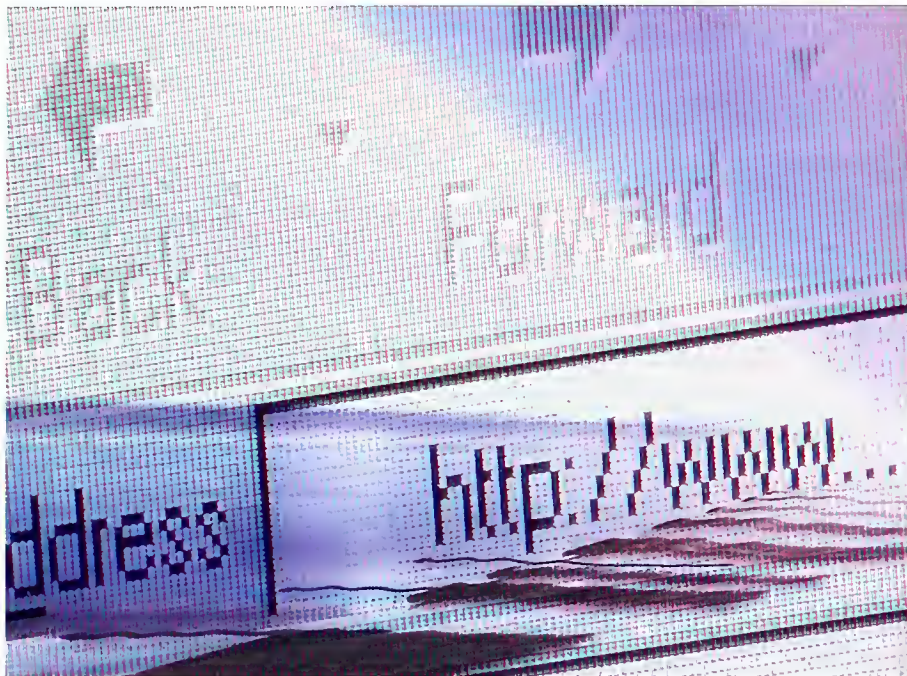
Website Analysis

Part 4 — Accessibility
What to Look For

___ Yes ___ No — If you hold your mouse pointer over a photograph or an illustration, does a descriptive label come up?

___ Yes ___ No — If you go in Internet Explorer to View/Text Size/Largest, or in Netscape Navigator to View/Text Zoom/200%, does most of the text on the website get bigger? Does the page still work?

Website Analysis

Part 5 — Effective Content Management
#### What to Look For

___ Yes ___ No — Does your website say when it was last updated? How recently was it updated?

___ Yes ___ No — If you have a calendar of meetings and events, are meetings and events posted for the next several months?

___ Yes ___ No — Think of the most recent personnel change at the department-head level. Is the new hire listed on the website?

___ Yes ___ No — If you have a News, or What's New?, or Current Events link, are the items posted current and relatively new?

___ Yes ___ No — Is there any place to post critical information such as weather-related closings?

___ Yes ___ No — Is there any information on your website about significant recent or upcoming events, such as tax due dates, property tax reappraisals, elections, and changes to ordinances? Is the information up-to-date?

Outreach Question

___ Yes ___ No — Ask staff members what they do to make a change in or post information to the website. Can department heads get new information posted on the site within a week if they need to?

users' focus on their mission with your website (and you). The site tells people something about the character of your community. It makes an impression, and you want it to be a good one. Pages should be uncluttered so that people can find what they want. Pages should include graphic elements to focus attention on important information. And they should definitely use colors and fonts that are easy to see and read.

Assess your site on this dimension (see "Website Analysis," Part 3, on page 20).
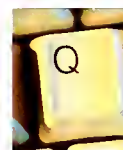
4—Accessibility
Is your website accessible to people with a wide variety of disabilities and special needs?

Section 508 of the Rehabilitation Act requires that governments receiving federal funding comply with certain standards for making websites accessible to people with visual and other impairments.[5] The World Wide Web Consortium has developed a similar set of Priority Level 1 guidelines for ensuring accessibility.[6] These standards are not required of local governments, but they do set an ideal for service to all members of the community. Philip Young covered the topic of standards thoroughly in the Winter 2005 issue of *Popular Government.*[7] The website analysis accompanying this article provides two simple questions you can use to check whether your website design addresses some basic Section 508 accessibility standards.

Assess your site on this dimension (see "Website Analysis," Part 4, on this page).
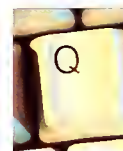
5—Effective Content Management
Is your site updated frequently, and is the information accurate?

How useful is a website that was "last updated on January 23, 2001"? You might as well not have a website if you don't have a system for managing the content—for maintaining the site effectively and keeping information accurate and up-to-date. Whether you use contractors or have an in-house website manager, content management will always have a strong tie back to your departments. They drive the updates.

If your system requires that all website changes go through the director of finance or the sheriff's administrative assistant (because ten years ago he or she took it on as an extra assignment), it may be hard to get timely information posted. Even if you have a designated staff member or department to maintain the website, there may be a bottleneck in getting new information posted. One option for reducing the bottleneck is use of specialized software for content management (see the sidebar on page 20).

Assess your site on this dimension (see "Website Analysis," Part 5, on page 21).

6—Costs and Benefits

Do your Web-based services have economic benefits, both for your agencies and for the people in your community?

If your citizens don't have to drive to your office, if you don't have to mail the forms, if your people can get the information they need today, if you don't have to spend time on the phone explaining procedures—all save money for you or someone in your community.

Secretaries, receptionists, and other employees can answer the same basic

Website Analysis

Part 6—Costs and Benefits

What to Look For

___ Yes ___ No   Can users download a job application form? An application for a building permit? Applications for social services? Requests for proposals (RFPs) for government purchases or contracts?

___ Yes ___ No   Can users fill in and submit any of the foregoing forms online?

Outreach Questions

___ Yes ___ No   Ask a receptionist for the three most frequent questions from callers. Are the answers to these questions posted and easy to find on your website?

___ Yes ___ No   Ask your webmaster whether your website employs a monitoring tool to count how many users access the website and to keep track of which parts of the website they are using. Do your department heads use this information to plan revisions or expansions of online services?

___ Yes ___ No   Do you promote your website so that people know to look there first? Is the address posted on your tax mailings? On utility or water bills? On brochures and fliers you distribute? In your offices? Do receptionists know to encourage people to use the website?

questions hundreds of times a month by phone. If half of the callers could find the information they need on your website, it would free your staff for other work. They could provide more service to people who do need to call or come in for personal attention.

Likewise, posting forms online to download saves you the time and cost of mailing materials, and people and businesses the time and cost of coming to your office. Even better, if people can fill out forms online, that saves a secretary the time it would take to enter information from a written application into a database or another computer format. And if people can make payments online, they'll save postage or travel time, and you'll save the cost of personnel to accept payments in person.

It's easy to monitor these benefits by recording "hits": how many people access the website, how many people look at each individual page, and how many times each file is downloaded from the website. You can even collect informa-

Agencies

The **e-NC Authority** (www.e-nc.org) is a source of state government assistance for local government websites. e-NC's Local e-Government Utilization Project (LEG-UP) provided funding for fifty-five communities in North Carolina to plan and produce interactive websites with at least one transactional feature. As a result of this project, e-NC has a wealth of information about successful projects, applications, and vendors. It can offer guidance on technical questions about infrastructure and connectivity. It also can connect you with someone who participated in LEG-UP for direct feedback and advice.

The **Center for Digital Government** (www.centerdigitalgov.com) is a national research and advisory institute. It focuses on information technology policies and best practices in state and local government. Its extensive surveys of city, county, and state programs provide insights into national trends in information technology use and policy development.

The **Center for Public Technology** at UNC at Chapel Hill's School of Government (www.cpt.unc.edu/) is a source of technical assistance and information on website planning and design. It also offers opportunities for training and education for local government leaders, managers, and staff.

tion on whether the hits are from new or repeat visitors. Using this information, it isn't hard to project savings in staff time, printing, and postage and to determine which online services are offering the most benefit to the community.

Some other advantages of online services are less tangible, relating to hidden costs or enhanced opportunities. Websites overcome some of the obstacles of sharing information with large groups. They can serve a relatively unlimited number of users at the same time. They can spread demand for service over more of

the twenty-four-hour day. And they can serve people over a wide geographic area.

For economic development, the website is most likely the first impression you make on people and businesses considering relocation to your community. Government officials cite long-term economic benefits to justify major investments in recruiting new businesses and industries. You can use the same justification for developing a website showing that the community is dynamic and that the local government offers great services to residents and citizens.

Online services may actually cut the cost of providing services, and they may allow you to improve the quality and effectiveness of services. A 2003 Australian

study of e-government benefits reported that cost savings are achieved through a combination of direct savings, savings on delivery costs, and improved internal processes. Some agencies even have an increase in revenue from the use of new chargeable services.[8] Services such as renewing driver's licenses and hunting licenses, or ordering copies of birth and death certificates, can be offered online with a fee attached. Of course, you need to ensure the security of all online transactions.

In addition, online services can provide improved service at no additional cost. Individuals and businesses estimate a cost savings of up to $25 per transaction due to faster turnaround of infor-

mation requests and faster access to documents and forms. In the Australian study, more than 90 percent of citizens surveyed indicated an overall improvement in service delivery as a result of using e-government.[9]

Assess your site on this dimension (see "Website Analysis," Part 6, on page 22).

Now What? Strategies for Adding "e"

The accompanying analysis isn't a pass/fail evaluation. It suggests a continuum of investment. If you answered yes to a lot of the questions, then you're significantly invested in e-government. Indeed, in doing the analysis, you may have gotten some additional ideas that will help you develop an even more dynamic, citizen-centered, service-oriented online presence. If you couldn't answer yes to many of the questions, then you know you have an opportunity for growth. This is not a time to place blame. The current condition of your website is the result of investment or noninvestment by many people in leadership and staff positions over a long period.

In other areas—public safety, library services, social services—when you see the communities around you moving in a certain direction, you generally take some time to consider whether that direction would be good for your community. So maybe it's a good time to look at the websites of five or six of your neighboring communities with similar budgets and demographics. It wouldn't hurt to look at websites of larger or more progressive communities around you, also. Are those communities using their websites in ways that might be beneficial to your community?

Then you can look back at your website with your colleagues and staff and consider the following questions:

- Does your website solve problems for individuals and organizations by providing needed information and services online?

- Are you using your website as a cost-effective channel for agencies, departments, and employees to serve individuals and organizations?

> Compare your website to the websites of similar, neighboring communities.

- Does your website convey an image that contributes positively to local economic development efforts and to general public perception of the community?

If you decide to build your "e" capabilities, you can focus on four main challenges:

Market Research

- Find out what individuals and organizations want and need from you.

- Decide where to focus your investment and what you can realistically offer at this time.

Content Development

- Use public communication principles and your market research to collect and organize information and services.

- Use plain-language principles to write content for your website that will be logical and easy for people to use and understand.

- Make content development a major consideration in your budget.

Web Design

- Select the best Web applications to achieve your service goals.

- Design pages that will be attractive to people and easy to use and understand.

Ongoing Support

- Commit staff or resources to content management so that the website will be updated regularly.

- Establish realistic evaluation measures so that you can monitor cost benefits and other benefits to the community.

Whether you work with staff or with contractors, make sure your plans ad-

dress each of these elements. Many web design companies will focus on design only, requiring you to provide all the content. That's okay if you know it in advance and have the capabilities (or an independent communications consultant) to do market research, develop content, and provide ongoing support.

It's easy to pay a lot for a website design that looks great but doesn't focus on people or service, isn't easy to use, is difficult or expensive to update, and doesn't offer any cost savings or service benefits to your community. But if you go into the process prepared, you can negotiate or coordinate to develop a dynamic cost-effective website that is user focused and service oriented. And finally you can declare, "We are 'e'!"

Notes

1. National League of Cities and Center for Digital Government, *2004 Digital Cities Survey—Final Survey Report* (Washington, D.C.: the League; Folsom, Calif.: the Center, 2004).

2. Jonathan D. Parks and Shannon H. Schelin, "Assessing e-Government Innovation," in *Handbook of Public Information Systems*, ed. G. David Garson (2d ed. Boca Raton, Fla.: CRC Press, Taylor and Francis Group, 2005).

3. The tool is divided into six parts, which are presented separately in this article. An integrated version of the tool is available online at www.sog.unc.edu/popgov/.

4. Darrell M. West, *Achieving E-Government for All: Highlights from a National Survey* (Washington, D.C.: Benton Foundation; Albany, N.Y.: New York State Forum, Rockefeller Institute of Government, 2003). Available at www.benton.org/publibrary/egov/access2003.html.

5. The standards are available at www.usa.gov/webcontent/reqs_bestpractices/laws_regs/accessibility.shtml.

6. The standards are available at http://www.w3.org/tr/wai-webcontent/.

7. Philip Young, "Local Government and the Internet: Key Issues and Best Practices for Nontechnical Officials," *Popular Government*, Winter 2005, pp. 20–27.

8. National Office for the Information Economy, *E-Government Benefits Study* (Canberra, Australia: Australian Government Information Management Office, Australian Government, 2003). Available at www.agimo.gov.au/__data/assets/file/16032/benefits.pdf.

Juvenile Curfews: Constitutional Concerns and Recommended Remedies

Daniel M. Blau

Scott Lewis / Raleigh News & Observer

Combating juvenile crime is one of the biggest challenges facing local governments across the country. Cities and counties employ many strategies to ensure that minors become neither perpetrators nor victims of crime. Juvenile curfews have proven to be popular crime-fighting tools, especially among

The author is a 2007 graduate of the University of North Carolina School of Law. In summer 2006 he served as a law clerk at the School of Government, where he researched contemporary issues in juvenile curfew law. Contact him at dmblau@gmail.com.

cities.[1] However, curfews raise substantial concerns about the constitutional rights of minors and about parents' rights to raise their children in the manner they see fit.

North Carolina state appellate courts have not addressed whether curfews for minors are constitutionally valid. Consequently, local governments must look to other state courts and to federal courts for direction. Some of these courts have recognized the authority of local governments to enact curfew ordinances to combat juvenile crime, but other courts have struck down curfew ordinances that unnecessarily burden constitutional rights.[2]

A 1995 *Popular Government* article examined the body of law on juvenile curfews, discussed some practical concerns for local governments considering curfews, and offered recommendations to local governments seeking to enact curfew ordinances that would comply with the U.S. Constitution.[3] At that time, only two federal courts of appeals (also known as "circuit courts") had considered the constitutionality of juvenile curfews. Most curfew law originated in state courts. In the decade since, however, the body of federal case law has greatly expanded, rendering many state decisions obsolete.[4] Six

federal circuit courts now have decided juvenile curfew cases. Rather than bringing uniformity to this area of law, however, the six courts have been unable to reach a consensus on nearly every legal issue in curfew cases.

This article updates the 1995 survey of curfew jurisprudence in the federal circuit courts. The article also offers recommendations for North Carolina cities and counties drafting juvenile curfew ordinances.

The article gives special attention to a 1998 decision of the Fourth Circuit Court of Appeals in the case of *Schleifer v. Charlottesville*.[5] In *Schleifer*, a group of minor children and their parents challenged the constitutionality of a curfew ordinance enacted by the city of Charlottesville, Virginia. They argued that the curfew infringed on the parents' rights to raise their children, overly burdened the minors' rights to freedom of movement and First Amendment expression, and was unconstitutionally vague. The Fourth Circuit Court rejected each of these challenges. In the absence of a decision by the U.S. Supreme Court, a decision by the Fourth Circuit Court is binding on Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

Authority

The General Assembly authorizes cities and counties in North Carolina to create curfew ordinances that apply to persons "of any age less than [eighteen]."[6] In practice, cities, not counties, typically create juvenile curfews.

Constitutional Challenges to Curfew Ordinances

Minors' Rights and Judicial Review

Plaintiffs most often challenge juvenile curfew ordinances as violations of minors' rights under the Due Process and Equal Protection clauses of the Fourteenth Amendment to the U.S. Constitution.[7] When plaintiffs challenge a law on such grounds, courts subject the law to varying levels of scrutiny, depending on the nature of the legal right affected by the law.[8] If the law does not implicate an important or fundamental right, courts apply "rational-

basis scrutiny," which requires merely that the law serve a legitimate governmental interest and be rationally related to achieving that interest. If the law does implicate a fundamental right, courts subject the law to "strict scrutiny," requiring that it serve a compelling governmental interest and be narrowly tailored to achieve that interest. If the law implicates a right that is is important but not fundamental, courts may select an intermediate level of scrutiny.

The U.S. Supreme Court has recognized that adults have a fundamental right under the Due Process Clause to engage in interstate travel.[9] Some federal circuit courts and state courts have recognized that adults also have a fundamental right under the Due Process Clause to intrastate travel, or a general right to free movement.[10] A curfew aimed at adults would burden such rights and therefore be subject to strict scrutiny.

A curfew aimed solely at minors, however, may be subject to more lenient review. In *Bellotti v. Baird*, the U.S. Supreme Court held that minors may be treated differently than adults under the U.S. Constitution because of "the particular vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing."[11] However, the Court did not explain exactly how minors' constitutional rights might be weighed differently if these factors were present in a given case. Subsequent decisions by lower courts have varied in their analysis of minors' constitutional rights based on the language in *Bellotti*. Some courts, including the Fourth Circuit Court in *Schleifer*, have interpreted *Bellotti* as meaning that, even though minors may have constitutional rights to free movement, curfews that burden such rights are subject only to some intermediate level of judicial review (less than strict scrutiny) if the *Bellotti* factors are present.[12] Other courts have held that curfews burdening minors' fundamental rights are subject to strict scrutiny but the presence of the *Bellotti*

factors strengthens the government's compelling justification for them.[13] One federal circuit court has held that minors lack any constitutionally protected right to free movement. Thus it would subject curfews to the most lenient standard of judicial review.[14]

Minors' Due Process Right to Free Movement

To survive intermediate scrutiny in the Fourth Circuit Court, a juvenile curfew must serve an important governmental interest and be sufficiently tailored to achieve that interest.

Local governments often assert three main justifications for their juvenile curfews: (1) to protect the general public through a reduction in juvenile crime; (2) to promote minors' safety and well-being; and (3) to encourage and facilitate parental responsibility.[15] Generally, federal courts find the first two justifications, or interests, to be sufficiently important to support a juvenile curfew. Most courts, including the Fourth Circuit Court in *Schleifer*, have found the third interest to be important as well. They reason that parents and the government share a responsibility to protect minors. As long as state authority complements (rather than supplants) parental authority, its aims are legitimate. Other courts disagree, holding that a city cannot strengthen parental responsibility by divesting parents of decision-making authority and reserving that power for itself.[16]

If a court finds the city's proffered interests to be sufficiently important, it must determine whether the terms of the curfew are sufficiently tailored to achieve those interests. Courts generally look at two factors to answer this question.

First, a city must present evidence that a juvenile crime problem exists and that its curfew will alleviate the problem in a direct and material way. For example, if a city can document a problem with juvenile crime only after 11:00 P.M., a curfew that begins at 9:00 P.M. may be too broad and thus not sufficiently tailored to achieve the city's important interests. Although courts tend to defer

> A curfew that exempts a broad range of legitimate late-night conduct is much more likely to be legally permissible than one that does not.

to local fact-finding in this area, they still require cities to present statistical or other evidence in support of their curfews.[17]

Second, the curfew must be no more restrictive than necessary to achieve the government's interests. A curfew's exceptions are the most important elements in addressing this factor. If a curfew exempts from its reach a broad range of legitimate late-night conduct, it is much more likely to be legally permissible than if it does not exempt such conduct. Such exceptions may include constitutionally protected activities like freedom of speech or religious exercise, civic activities, activities undertaken with adult supervision or permission, employment activities, and emergency situations.

Parents' Due Process Right to Raise Their Children

The U.S. Supreme Court has consistently recognized that parents have a fundamental right under the Due Process Clause to raise their children in the manner they see fit, without undue influence from the government.[18] Any governmental action that burdens this right is subject to strict scrutiny, and a curfew

may be unconstitutionally broad if it does not allow an exception for minors who are out during curfew hours with permission from their parents. Thus, curfew ordinances raise two inquiries in this area: First, does a curfew implicate parents' fundamental rights to raise their children? Second, if so, does the curfew survive strict scrutiny?

The Fourth Circuit Court held in *Schleifer* that the Charlotteville curfew did not implicate parents' fundamental rights. Rather than recognizing a broad right of parents to control their children's movement, the court defined the right at issue narrowly, as the right to allow "young children [to] remain[] unaccompanied on the streets late at night . . ."[19] The court then explained that this right was not the type of "intimate family decision" that was entitled to due process protection.[20] Rather, the curfew was a permissible child welfare regulation that did not implicate parents' rights.

Other federal circuit courts have disagreed, holding that curfews do implicate parents' due process rights.[21] Even so, curfews may be valid in those circuits if they survive strict scrutiny.

As noted earlier, courts universally recognize that cities have compelling interests in protecting the public, including ensuring the safety and well-being of minors. Thus the first prong of the strict scrutiny test is satisfied, and the question becomes whether the curfew is narrowly tailored to achieve those interests. On this test, courts are adamant that curfews are narrowly tailored only if they complement or enhance parental authority, rather than challenge or usurp it.[22] A local government can achieve the desired balance by including numerous exceptions for specified parent-approved activities such as employment and family errands, or perhaps by including a general exception for any activity undertaken with parental permission. These exceptions guarantee that a curfew makes minimal—and permissible—intrusions into the protected realm of family decision-making.[23]

Challenges of Vagueness

In addition to protecting fundamental rights, due process requires that criminal laws be consistent with notions of fairness. Such laws must clearly define

the conduct they prohibit so that the public has sufficient notice regarding their reach.[24] If a curfew ordinance does not provide sufficient notice of the conduct it prohibits, courts may consider it unconstitutionally vague.

Curfew ordinances have been challenged as vague on a number of grounds. A challenge of vagueness is likely to be successful if the ordinance does not provide adequate notice of the times during which it is enforced. For example, if the curfew lasts from "dusk until dawn," or if it begins at a certain time in the evening but has no ending time the following morning, a court is likely to find the ordinance invalid.[25] Plaintiffs also have challenged curfew provisions involving the definition of the prohibited conduct. For example, an ordinance that prohibits "remaining in a public place" during curfew hours must define "remain" and "public place" with sufficient specificity that minors will be on notice regarding what conduct is prohibited and where.[26] Similarly, an ordinance that exempts minors engaged in a "civic activity" or involved in an "emergency" must sufficiently define these terms.[27]

Finally, plaintiffs have challenged curfew ordinances as vague with regard to their First Amendment exceptions.[28] Many ordinances exempt minors who are engaged in protected First Amendment activity. Plaintiffs have argued that this type of exception is vague because the actual boundaries of First Amendment protections are unclear. In the D.C. Circuit Court, for example, plaintiffs have unsuccessfully claimed that "juveniles would need to be 'constitutional scholars' to know what activities were forbidden[,] and . . . police officers untrained in the intricacies of the First Amendment will, in their unguided discretion, enforce the curfew unconstitutionally."[29] The Fourth Circuit Court rejected a similar challenge in *Schleifer*, finding that Charlottesville's efforts to respect the First Amendment were laudable and that any marginal cases could be resolved on a case-by-case basis.[30] At least one judge on the Fourth Circuit Court disagreed with this holding, how-

ever, claiming that because of the uncertainty of the reach of First Amendment protection, a basic exception for "First Amendment activity" unduly chills the exercise of potentially protected conduct.[31]

Other First Amendment Concerns

Governmental actions that burden protected First Amendment speech may nonetheless be valid if they merely place reasonable restrictions on the time, place, and manner of such speech. The U.S. Supreme Court has held that, to be reasonable, such restrictions must "(1) [be] content neutral, (2) [be] narrowly tailored to serve a significant governmental interest, and (3) allow for ample alternative channels for . . . expression."[32]

If a curfew ordinance does not contain a First Amendment exception, it is almost certain to fail this test. The Ninth Circuit Court, for example, has held that if an ordinance lacks "a robust, or even minimal, First Amendment exception to permit minors to express themselves during curfew hours," it does not meet requirement 2.[33]

Even if a curfew ordinance does contain a First Amendment exception, it still may fail to meet requirement 2. According to the Seventh Circuit Court, a curfew ordinance is more restrictive than necessary if it does not impose a duty on police officers to investigate whether a minor is engaged in protected First Amendment activity.[34] Consider, for example, a minor who, during curfew hours, attends a political protest. The activity is clearly protected by the First Amendment. A police officer sees the minor walking home from the protest. If the officer has no duty to investigate the reasons for the minor's violation of the curfew, the officer may arrest the minor and force her to assert her First Amendment defense in court.[35] Although the minor may ultimately avoid liability, the Seventh Circuit Court recognized that the mere threat of arrest would impermissibly chill protected expression. The Fourth Circuit Court has not considered a similar challenge.

> **To be narrowly tailored, curfews must complement or enhance parental authority, not challenge or usurp it.**

Supreme Court Involvement

In 1976 the U.S. Supreme Court declined to review a Third Circuit Court ruling that upheld a juvenile curfew ordinance.[36] Justice Thurgood Marshall disagreed with the Court's decision to pass on the case. He believed that Supreme Court precedent was unclear concerning the extent to which the Constitution protects minors' rights, and he would have taken the case in order to resolve this issue.

Curfew jurisprudence since 1976 has not resolved the issue. In fact, the preceding discussion demonstrates that there are many conflicts in the federal courts regarding issues in juvenile curfew law, including whether juvenile curfews implicate the fundamental due process rights of minors or their parents; how those rights should be defined; what the appropriate level of judicial scrutiny is; and how adequate curfew exceptions are, especially those exempting protected First Amendment activity.

These types of disagreements in decisions of the various federal circuit courts is generally a good indicator that the U.S. Supreme Court will agree to hear a case in order to resolve the disagreements. The Court, however, has let them stand. It declined to review a juvenile curfew case in 1993.[37] It then declined to review the Fourth Circuit Court's 1998 holding in *Schleifer*.[38]

Recommended Remedies

Although the Fourth Circuit Court upheld a juvenile curfew ordinance in *Schleifer*, the court would not necessarily uphold an identical curfew ordinance in a differently situated city or a more burdensome curfew ordinance in the same city. The court viewed the challenged Charlottesville ordinance as "among the most modest and lenient of the myriad curfew laws implemented nationwide."[39] However, at least one judge on the Fourth Circuit Court and majority panels on other federal circuit courts have strongly asserted that certain types of curfew ordinances are unconstitutional. Thus a city or a county considering a curfew for juvenile crime control should be aware that any ordinance it creates could be vulnerable to legal challenge. It should look to the

opinions of courts nationwide to help craft a regulation that satisfies constitutional due process, equal protection, and First Amendment requirements.[40]

Following are recommendations to local governments seeking to enact a juvenile curfew ordinance that is constitutionally defensible. Any such ordinance should include the following components: an explanation of the need for a curfew, definitions of terms, a statement of the target population and the prohibited conduct, and a list of exceptions to the curfew.

The Need for a Curfew

This introductory section should include two important features: a statement of the purposes of the curfew, and the reasons for its necessity; and a statement of the facts that led the city to conclude that the curfew and its specific terms are needed.

Many ordinances have framed their purposes in terms similar to the *Bellotti* factors, listed earlier. The Charlottesville ordinance, for example, stated its purposes as follows: "to (i) promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the city; (ii) promote the safety and well-being of the city's youngest citizens, persons under the age of seventeen (17), whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities . . . ; and (iii) foster and strengthen parental responsibility for children."[41] The first two purposes have been almost universally recognized as important or compelling governmental interests. However, the third purpose has been attacked by a number of judges who think that curfews threaten to usurp, rather than supplement, parental authority. That would constitute a violation of parents' due process rights to raise their children in the manner they see fit.[42] Thus, any curfew ordinance should clearly state that it is meant only to supplement or enhance parental authority while respecting parents' fundamental rights to rear their children. More important, the curfew ordinance must actually strike this balance when implemented. An ordinance that offers myriad exceptions for parent-approved activities is more likely to achieve this constitutional balance than one that does not.

Regarding facts to support the curfew ordinance, a city should consider a wide range of data—for example, local police records, including the ages of offenders and victims, and the times and locations of crimes; national crime statistics; crime statistics from other localities that have implemented juvenile curfews, including pre- and post-curfew crime statistics; opinion surveys; and news reports.[43]

Although all this information is relevant and important to establishing the need for a curfew, courts will require that cities carefully consider local data and sufficiently tailor their curfew ordinances to remedy a documented local problem. Consideration of some over-inclusive statistics may be acceptable. For example, the curfew ordinance challenged in the D.C. Circuit Court case *Hutchins v. District of Columbia* affected only minors age sixteen and younger. The court held that, to support the curfew, the city could rely on arrest

statistics that included seventeen-year-olds, even though inclusion of those statistics overstated the juvenile crime problem.[44]

Reliance on underinclusive or incomplete statistics poses a more difficult problem. In *Ramos v. Vernon*, for example, the Second Circuit Court rejected the evidentiary basis for a curfew ordinance in Vernon, Connecticut. The town had received complaints about young people gathering on the streets, but no such complaints came during curfew hours. In fact, there was no suggestion that the groups of minors ever engaged in criminal activity. Even if there had been a crime problem, the town never showed that the juveniles targeted by the curfew were the perpetrators or the victims of such crime.[45]

In general, the closer the fit between the proven problem and the chosen remedy, the greater the likelihood that a curfew ordinance will be constitutionally permissible.

Definitions of Terms

Four terms commonly used in curfew ordinances have been challenged on grounds of vagueness: "remain," "civic organization," "emergency," and "First Amendment activity." Defining these terms carefully and thoroughly may help insulate a curfew ordinance from such challenges.

"*Remain*": Ordinances typically make it illegal for minors to "remain" in public places during curfew hours. The word should be defined to give minors sufficient notice of the exact type of conduct prohibited by the curfew ordinance. The Ninth Circuit Court, for example, has held that terms such as "loiter, idle, wander, stroll, or play" are impermissibly vague and do not give adequate notice of the type of conduct prohibited.[46] No other circuit court, however, has considered a similar challenge of vagueness.

"*Civic organization*": Ordinances generally make an exception for minors attending an activity sponsored by a "civic organization." Plaintiffs have claimed that "civic" is vague. Courts have universally disagreed, and the Fourth Circuit Court has assigned "civic" its common definition of "concerned with or contributory to the general welfare and the betterment of life for the citizenry of a community."[47] This definition could be incorporated into any curfew ordinance containing a civic exception.

"*Emergency*": Many ordinances allow an exception for minors experiencing an emergency. Plaintiffs have argued that "emergency" is vague. Again courts have universally disagreed, especially if the ordinance contains a detailed definition of "emergency." The Fourth Circuit Court in *Schleifer*, for example, upheld Charlottesville's curfew ordinance, which defined the term as "unforeseen circumstances, or the status or condition resulting therefrom, requiring immediate action to safeguard life, limb or property. The term includes, but is not limited to, fires, natural disasters, automobile accidents, or other similar circumstances."[48] This definition could be incorporated into any curfew ordinance offering an emergency exception.

"*First Amendment activity*": As noted earlier, at least one judge on the Fourth Circuit Court thinks that because the exact boundaries of First Amendment protection are unclear, an exception for minors exercising protected "First Amendment activity" is impermissibly vague. This perspective presents an interesting dilemma. On the one hand, attempting to define "First Amendment activity" adequately may be a hopeless exercise. On the other hand, federal case law makes clear that a curfew ordinance must contain an exception for protected First Amendment activity in order to pass constitutional muster. Because of this dilemma, a better approach than defining "First Amendment activity" may be to recognize the inherent vagueness of a First Amendment exception and take steps to ensure that the vagueness does not impermissibly infringe on minors' First Amendment rights. This approach is discussed at greater length later in this article.

The Target Population and the Prohibited Conduct

This section should include (1) a statement of the people to whom the curfew applies, (2) a description of the prohibited conduct, (3) the locations where such conduct is prohibited, and (4) the hours during which such conduct is prohibited.

Part 1 of this section should clearly state whether the curfew applies to all minors (excluding emancipated minors) or simply to minors under a certain age. Charlottesville's curfew ordinance defined "minor" as "any person under seventeen (17) years of age who has not been emancipated by court order . . ."[49] Although legislative bodies have some discretion in defining the targeted population, a city should have sufficient evidence, or other important or compelling reasons, to support the application of the curfew to every age group in the targeted population.[50]

As to parts 2 and 3, Charlottesville's ordinance describes the prohibited conduct and related locations as follows: "It shall be unlawful for a minor, during curfew hours, to remain in or upon any public place within the city, to remain in any motor vehicle operating or parked therein or thereon, or to remain in or upon the premises of any establishment within the city."[51]

As noted earlier, any vague terms in parts 2 and 3, such as "remain," "public place," or "establishment," should be sufficiently defined in the definitions section of the ordinance. Doing so ensures that minors have sufficient notice regarding the exact nature of the conduct prohibited by a curfew ordinance. In the Charlottesville ordinance, "remain" is defined as "(1) to stay or linger at or upon a place; and/or (2) to fail to leave a place when requested to do so by an officer or by the owner, operator or other person in control of that place." "Public place" is defined as "any place to which the public or a substantial group of the public has access, including, but not limited to: streets, highways, roads, sidewalks, alleys, avenues, parks, and/or the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities and shops." "Establishment" means "any privately-owned place of business within the city operated for a profit, to which the public is invited, including, but not limited to any place of amusement or entertainment."[52]

Part 4 must include both starting and ending times for the curfew. These times should be presented in HH:MM format (for example, 11:00), rather than in general terms such as "dusk" or "sun-

rise." Curfew hours are generally left to legislative discretion, as long as there is sufficient statistical evidence or other important or compelling reasons to support applying the curfew during its stated hours. Some judges, however, may express more concern with long-running curfews (such as 9:00 P.M.–6:00 A.M.) than with curfews covering only short, late-night periods (say, 12:00 A.M.–5:00 A.M.), even if juvenile crime is a documented problem at all hours.[53] In *Schleifer*, for example, the Charlottesville curfew upheld by the Fourth Circuit Court began at 12:01 A.M. on weeknights and 1:00 A.M. on weekend nights, and ended at 5:00 each morning.[54]

> Juvenile curfew ordinances must satisfy constitutional due process, equal protection, and First Amendment standards.

With regard to each of these sections, one judge on the D.C. Circuit Court has offered some valuable advice: A city should not adopt another city's ordinance "wholesale." Rather, it should tailor the ordinance to its specific circumstances. Indeed, wrote the judge, "[t]he need for substantial tailoring precludes off-the-rack solutions . . ."[55]

Exceptions to the Curfew

A curfew ordinance's exceptions are the most important factor in ensuring that it is no more restrictive than necessary to achieve a city's interests in controlling juvenile crime.[56] Eight common exceptions are found in many curfew laws. Every federal circuit court that has reviewed a curfew ordinance containing these eight exceptions has upheld it.[57] Every federal circuit court that has considered a curfew ordinance lacking all eight exceptions has struck it down.[58] This is not to say that all the exceptions are constitutionally mandated, although some, such as the First Amendment exception, clearly are. Rather, this list of exceptions can serve as a guide to cities seeking to enact an ordinance that complies with the U.S. Constitution but is not impermissibly restrictive.

The eight standard exceptions are as follows. All these exceptions appear in the Charlottesville ordinance, with minor modifications.

1. *The minor is involved in an emergency.* The term "emergency" should be sufficiently defined.

2. *The minor is engaged in an employment activity, or is going to or returning home from such activity, without detour or stop.*

3. *The minor is on the sidewalk directly abutting a place where he or she resides with a parent.* This exception may be written to allow a minor also to be on a neighbor's property, with the permission of the neighbor.

4. *The minor is attending an activity sponsored by a school, religious, or civic organization, or by a public organization or agency, or by a similar organization or entity, as long as the activity is supervised by adults; and/or the minor is going to or returning home from such activity, without detour or stop.* The term "civic organization" should be sufficiently defined.

5. *The minor is accompanied by a parent.*

6. *The minor is on an errand at the direction of a parent.* This exception may be written to include other requirements —for example, that the minor have in his or her possession written permission from a parent, which should include the parent's contact information and a description of the authorized errand. Alternatively, this and the preceding exception might be broadened to exempt any minor who is in public during curfew hours, for whatever reason, as long as the minor has parental permission.

7. *The minor is involved in interstate travel through, or beginning or ending in, the City of X (the city enacting the ordinance).* The U.S. Supreme Court has recognized a fundamental right to interstate travel, suggesting that such an exception may be constitutionally mandated. The exception also may exempt minors involved in intrastate travel. The Supreme Court has never recognized a fundamental right to intrastate travel. However, some federal circuit courts and some state courts recognize such a

right. Neither the Fourth Circuit Court nor North Carolina state courts have issued an opinion on this question.[59]

8. *The minor is exercising First Amendment rights protected by the United States Constitution.* This exception has been a contentious issue in curfew cases. The only clear holding from the federal cases is that a curfew ordinance must have a First Amendment exception. Most courts have upheld general First Amendment exceptions. However, as noted earlier, some judges think that a standard exception for "protected First Amendment activity" is unconstitutionally vague because police and minors (and courts, for that matter) simply do not know the full extent of First Amendment protection. Thus these exceptions carry too great a threat of unduly chilling expression that is constitutionally protected. Unfortunately these judges have provided little guidance on how to fashion a valid First Amendment exception.

Still, experimentation is possible. Rather than trying to craft an exception that would not be vague, it may be more realistic to acknowledge the inherent vagueness of a First Amendment exception and take steps to ensure that such vagueness does not pose a constitutional problem. The Seventh Circuit Court has suggested that this objective may be achieved by imposing an affirmative duty on a police officer to investigate the reasons for a minor's violation of the curfew.[60] For example, a city could (1) require an officer to conduct a reasonable investigation to determine whether a minor in violation of the curfew is shielded by one of the exceptions, and (2) forbid an officer from enforcing the curfew unless the officer has probable cause to believe that the minor is violating the curfew and is not shielded by one of the exceptions.

By imposing an affirmative duty on the officer to investigate and by bringing the existence of exceptions within the probable cause requirement, this proposal may significantly reduce the threat of chilled speech. Rather than merely enforcing the curfew and requiring a minor to assert his or her First Amendment defense in court, an officer would have to consider the

minor's First Amendment rights while the minor is still on the streets. Although chilling of protected speech remains a concern, this approach is more deferential to First Amendment rights and may give local police departments an incentive to provide training for officers regarding the scope of protected First Amendment activity.

Practical Considerations

A local government considering a juvenile curfew ordinance should confer with law enforcement agencies regarding how to provide for custody and penalties for minors. Minors who are at least age sixteen but not yet age eighteen may be punished as adults in North Carolina. For minors in this age group, a curfew ordinance may punish a violation with a fine or imprisonment, as otherwise permitted by law. However, the North Carolina Juvenile Code does not permit minors under age sixteen to be punished by a fine or imprisonment, though they still may be subject to delinquency proceedings.[61] For these minors, a curfew ordinance may authorize law enforcement officers to take temporary custody of them.[62]

A local government also may face significant practical problems in enforcing a juvenile curfew. For example, does the local law enforcement agency have adequate resources to enforce a curfew for minors effectively? Are law enforcement officers provided with sufficient training to understand the curfew ordinance and to enforce it correctly? Typically a local government will want to know that it has the support of its local law enforcement agency in creating a curfew ordinance. Additionally, does the local community support a curfew? In the absence of widespread support, a government may be more vulnerable to legal challenge from those who oppose the ordinance (though local support alone cannot save an otherwise unconstitutional curfew ordinance).

> To support a curfew ordinance, a city should consider a wide range of data—local police records, national crime statistics, crime statistics from localities that have implemented juvenile curfews, opinion surveys, news reports, and more.

Summary

This article summarizes relevant federal case law concerning juvenile curfew ordinances. Such ordinances raise a number of constitutional concerns. First, they may burden minors' due process and equal protection rights to free movement. For this burden to be constitutionally acceptable, a city must demonstrate that its curfew serves an important or compelling interest. Further, the city must justify its curfew with statistical evidence and must exempt a sufficient amount of legitimate nighttime activity.

Second, curfews may infringe on parents' due process rights to raise their children in the manner they see fit. Curfews must enhance, rather than supplant, parental decision-making. Broad exceptions for parent-approved conduct may ensure that this requirement is met.

Third, a curfew ordinance must be carefully drafted to put minors on sufficient notice regarding the exact type of conduct it prohibits. Any vagueness about the ordinance's reach, especially in the area of First Amendment expression, may raise constitutional concerns.

Finally, curfews may impermissibly infringe on minors' First Amendment rights unless the restrictions on the time, place, and manner of First Amendment expression are reasonable. This ensures that a curfew will not impermissibly chill the exercise of protected First Amendment freedoms.

Although federal case law is inconsistent, it provides valuable guidance to cities seeking to draft juvenile curfew ordinances that comply with the U.S. Constitution. Every curfew ordinance should contain a section stating why a curfew is necessary. The section should be based on the city's specific crime problems. The ordinance should clearly and specifically define the population to whom the ordinance applies, the type of conduct it prohibits, the locations where such conduct is prohibited, and the times during which such conduct is prohibited. Also, the ordinance should include a

broad range of exceptions for legitimate nighttime conduct. These exceptions ensure that the curfew is no more burdensome than necessary to achieve the government's important or compelling interests in juvenile crime control.

Notes

I thank Tom Thornburg, senior associate dean of the School of Government, for his guidance on this article.

1. *See* U.S. Conference of Mayors, *A Status Report on Youth Curfews in American Cities* (Washington, D.C.: U.S. Conference of Mayors, 1997). Also available online at news/publications/curfew.htm. The report discusses the experiences of 347 U.S. cities with curfews for minors.

2. For another survey of jurisprudence on this issue, *see* Craig Hemmens and Katherine Bennett, "Juvenile Curfews and the Courts: Judicial Response to a Not-So-New Crime Control Strategy," *Crime and Delinquency* 45 (1999): 99–121.

Here and elsewhere, I use the terms "implicate," "burden," and "infringe on" advisedly. A government action that in any way affects a constitutional right implicates that right. The government may then burden the constitutional right as long as its action can pass scrutiny by the courts. "Infringe on" suggests a violation of the constitutional right—a burdening that the government cannot justify.

3. *See* Thomas H. Thornburg, "Curfews for Minors and Other Special Responses to Crime," *Popular Government*, Fall 1995, pp. 2–13. This article is available as a reprint from the School of Government's publications office. Call 919.966.4119 or go to www.sogpubs.unc.edu/singlebook.php?id=121.

4. State court cases involving challenges based solely on state law, however, remain controlling in the respective states, as long as state law provides equal or greater protection than the U.S. Constitution.

5. Schleifer v. Charlottesville, 159 F.3d 843 (4th Cir. 1998).

6. N.C. GEN. STAT. §§ 153A-142 (hereinafter G.S.) (authorizing counties to enact curfew ordinances), 160A-198 (authorizing cities to enact curfew ordinances).

7. U.S. CONST. amend. XIV ("No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws").

8. In due process challenges, courts base the level of scrutiny on the nature of the legal right implicated by the law. In equal protection challenges, courts do the same but also look to whether the classification drawn by the statute disadvantages a "suspect class" of people. The U.S. Supreme Court has held that

age is not a suspect class. *See* Gregory v. Ashcroft, 501 U.S. 452, 470 (1991). Juvenile curfews are thus not subject to a higher level of scrutiny merely because they affect minors as a class. Therefore, the appropriate level of scrutiny in both due process and equal protection challenges to juvenile curfews is determined by the same factor: the nature of the legal right implicated by the statute.

9. *See, e.g.*, United States v. Guest, 383 U.S. 745, 757 (1966) ("The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union").

10. *See, e.g.*, Ramos v. Vernon, 353 F.3d 171, 176 (2d. Cir. 2003) ("The right to intrastate travel, or what we sometimes will refer to as the right to free movement, has been recognized in this circuit").

11. Bellotti v. Baird, 443 U.S. 622 (1979) (plurality opinion).

12. *See, e.g.*, Schleifer v. Charlottesville, 159 F.3d 843, 847 (4th Cir. 1998).

13. *See, e.g.*, Qutb v. Strauss, 11 F.3d 488, 492 & n.6 (5th Cir. 1993).

14. *See* Hutchins v. District of Columbia, 188 F.3d 531, 536–39 (D.C. Cir. 1999) (en banc). *See also Ramos*, 353 F.3d at 176–77 (discussing the three approaches to judicial review of juvenile curfews by federal circuit courts).

15. *See Schleifer*, 159 F.3d at 846. *See also, e.g.*, *Ramos*, 353 F.3d at 173.

16. *See, e.g.*, *Ramos*, 353 F.3d at 182–83; *Schleifer*, 159 F.3d at 867–68 (Michael, J., dissenting).

17. *See, e.g.*, *Schleifer*, 159 F.3d at 849. The Fourth Circuit Court in that case wrote, "[T]he curfew must be shown to be a meaningful step towards solving a real, not fanciful problem . . ." *Id.* (alteration added). To support its point, the court cited the decision in *Turner Broadcasting System v. FCC*, in which the U.S. Supreme Court said, "[The government] must do more than simply 'posit the existence of the disease sought to be cured.' It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." Turner Broad. Sys. v. FCC, 512 U.S. 622, 664 (1994) (alteration added) (citation omitted).

18. *See, e.g.*, Prince v. Massachusetts, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder").

19. *Schleifer*, 159 F.3d at 852 (alterations added).

20. *Id.* at 853.

21. *See, e.g.*, Nunez v. San Diego, 114 F.3d 935, 951–52 (9th Cir. 1997) ("The curfew is, quite simply, an exercise of sweeping state control irrespective of parents' wishes. Without proper justification, it violates upon [*sic*] the fundamental right to rear children without undue interference").

22. *See id.*; Ramos v. Vernon, 353 F.3d 171, 182–83 (2d Cir. 2003).

23. *See* Qutb v. Strauss, 11 F.3d 488, 495–96 (5th Cir. 1993).

24. Kolender v. Lawson, 461 U.S. 352, 357 (1983).

25. *See* Naprstek v. Norwich, 545 F.2d 815 (2d Cir. 1976).

26. *See Nunez*, 114 F.3d at 940–43.

27. *See, e.g.*, Hutchins v. District of Columbia, 188 F.3d 531, 547 (D.C. Cir. 1999) (en banc).

28. U.S. Const. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances").

29. *Hutchins*, 188 F.3d at 546 (alteration added).

30. Schleifer v. Charlottesville, 159 F.3d 843, 853–54 (4th Cir. 1998).

31. *Id.* at 871 (Michael, J., dissenting).

32. Hodgkins v. Peterson, 355 F.3d 1048, 1059 (7th Cir. 2004) (alterations added) (citing Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)).

33. Nunez v. San Diego, 114 F.3d 935, 951 (9th Cir. 1997).

34. *Hodgkins*, 355 F.3d at 1060–62.

35. *Id.* at 1061.

36. *See* Bykofsky v. Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd*, 535 F.2d 1245 (3d Cir. 1976), *cert. denied*, 429 U.S. 964 (1976).

37. *See* Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993), *cert. denied*, 511 U.S. 1127 (1994).

38. Schleifer v. Charlottesville, 159 F.3d 843 (4th Cir. 1998), *cert. denied*, 526 U.S. 1018 (1999).

39. *Id.* at 855.

40. Although the Fourth Circuit Court has provided guidance regarding U.S. constitutional requirements, there is no North Carolina state case law regarding juvenile curfews. So a North Carolina court may find that the state constitution provides more protection for minors' and parents' rights in this area than the federal Constitution does.

41. Charlottesville, Va., Code § 17-7 (2007). *See also, e.g.*, Ramos v. Vernon, 353 F.3d 171, 173 (2d Cir. 2003).

42. *See, e.g.*, *Ramos*, 353 F.3d at 182 ("[W]e cannot help but observe the irony of the supposition that responsible parental decisionmaking may be promoted by the government removing decisionmaking authority from responsible parents and exercising that authority itself") (alteration added).

43. *See Schleifer*, 159 F.3d at 849. *See also* Hutchins v. District of Columbia, 188 F.3d 531, 568–69 (D.C. Cir. 1999) (en banc) (Rogers, J., dissenting).

44. *See Hutchins*, 188 F.3d at 543.

45. *See Ramos*, 353 F.3d at 186.

46. *See* Nunez v. San Diego, 114 F.3d 935, 943 (9th Cir. 1997).

47. *Schleifer*, 159 F.3d at 854 (quoting Webster's Third New International Dictionary (Unabridged) 412 (1961)).

48. Charlottesville, Va., Code § 17-7(a) (2007).

49. *Id.*

50. *See* note 17 and accompanying text.

51. Charlottesville, Va., Code § 17-7(b) (2007).

52. *Id.* at § 17-7(a). The *Schleifer* plaintiffs did not challenge any of these provisions on the grounds of vagueness.

53. *Compare Schleifer v. Charlottesville*, 159 F.3d 843, 846 (4th Cir. 1998) (upholding curfew running from 12:01 A.M. to 5:00 A.M., Monday–Friday, and from 1:00 A.M. to 5:00 A.M., Saturday–Sunday), *with* Nunez v. San Diego, 114 F.3d 935, 938 (9th Cir. 1997) (striking down curfew running from 10:00 P.M. to daylight).

54. *Schleifer*, 159 F.3d at 846.

55. Hutchins v. District of Columbia, 118 F.3d 531, 569 (D.C. Cir. 1999) (en banc) (Rogers, J., dissenting).

56. Qutb v. Strauss, 11 F.3d 488, 493–94 (5th Cir. 1993).

57. *See id.*; *Hutchins*, 188 F.3d 531; *Schleifer*, 159 F.3d 843.

58. *See Nunez*, 114 F.3d 935; Ramos v. Vernon, 353 F.3d 171 (2d Cir. 2003).

59. The North Carolina Court of Appeals declined to answer this question in State v. Stewart, 40 N.C. App. 693 (1979). Also, the Fourth Circuit Court recently had the opportunity to answer this question but declined to do so. *See* Willis v. Marshall, 426 F.3d 251, 265 (4th Cir. 2005) ("[W]e conclude that in this case, there is no reason to decide whether the right to intrastate travel . . . [is a] fundamental right protected by the substantive component of the Due Process Clause") (alterations added).

60. *See* Hodgkins v. Peterson, 355 F.3d 1048, 1060–62 (7th Cir. 2004).
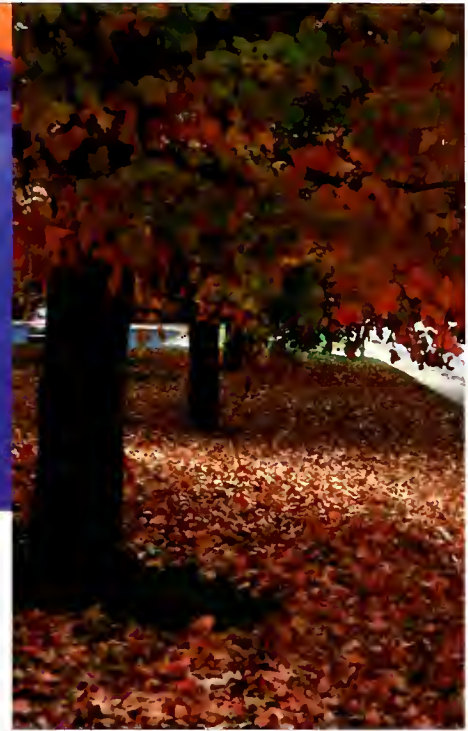
61. *See* G.S. 7B-1501(7), -1601.

62. *See* G.S. 7B-1900, -1901.

Benefiting from Comparative Performance Statistics in Local Government

William C. Rivenbark, David N. Ammons, and Dale J. Roenigk

Performance measurement was once a path-breaking management technique, undertaken only by the most progressive local governments. Today it is accepted as a professional norm for demonstrating operational accountability for service delivery and for creating an environment for productivity improvement. Although adoption of performance measurement systems is common, full implementation remains rare.[1] "Adoption" refers to the creation and collection of measures for tracking service performance. "Implementation" is the actual use of these measures for improving the efficiency and the effectiveness of service delivery. The distinction is critical. Given the expense of adoption, an adequate return on

The authors are School of Government faculty members specializing in local government administration. Contact them at rivenbark@sog.unc.edu, ammons@ sog.unc.edu, and roenigk@sog.unc.edu.

a local government's investment hinges on effective implementation.

When an organization engages in "benchmarking"— the comparison of its performance with relevant performance standards or the performance of other organizations — the investment is greater, and so is the desire for an adequate return.[2] Benchmarking consumes more organizational resources than internal performance measurement, given the difficulty of ensuring data accuracy, reliability, and comparability across multiple organizations. As the return on its investment, an organization hopes to gain ideas for operational improvement.

The North Carolina Benchmarking Project is a collaborative effort among participating municipalities that compares performance and cost data across ten service areas: residential refuse collection, household recycling, yard waste and leaf collection, police services, emergency communications, asphalt maintenance and repair, fire services, building inspections, fleet services, and human resources.[3] The School of Government manages the benchmarking project un-

der the guidance of a steering committee consisting of representatives from each participating municipality.

This article describes how the municipalities are using performance and cost data from the benchmarking project to improve the efficiency and the effectiveness of service delivery, including how one municipality used the data to prompt an analysis of fleet maintenance. It also discusses the importance of focusing on the higher-order measures of efficiency and effectiveness, and the benchmarking project's contribution to improving the quality of performance measures.

Overview of the North Carolina Benchmarking Project

The impetus for the benchmarking project came from two groups: city managers and budget officials. In 1994
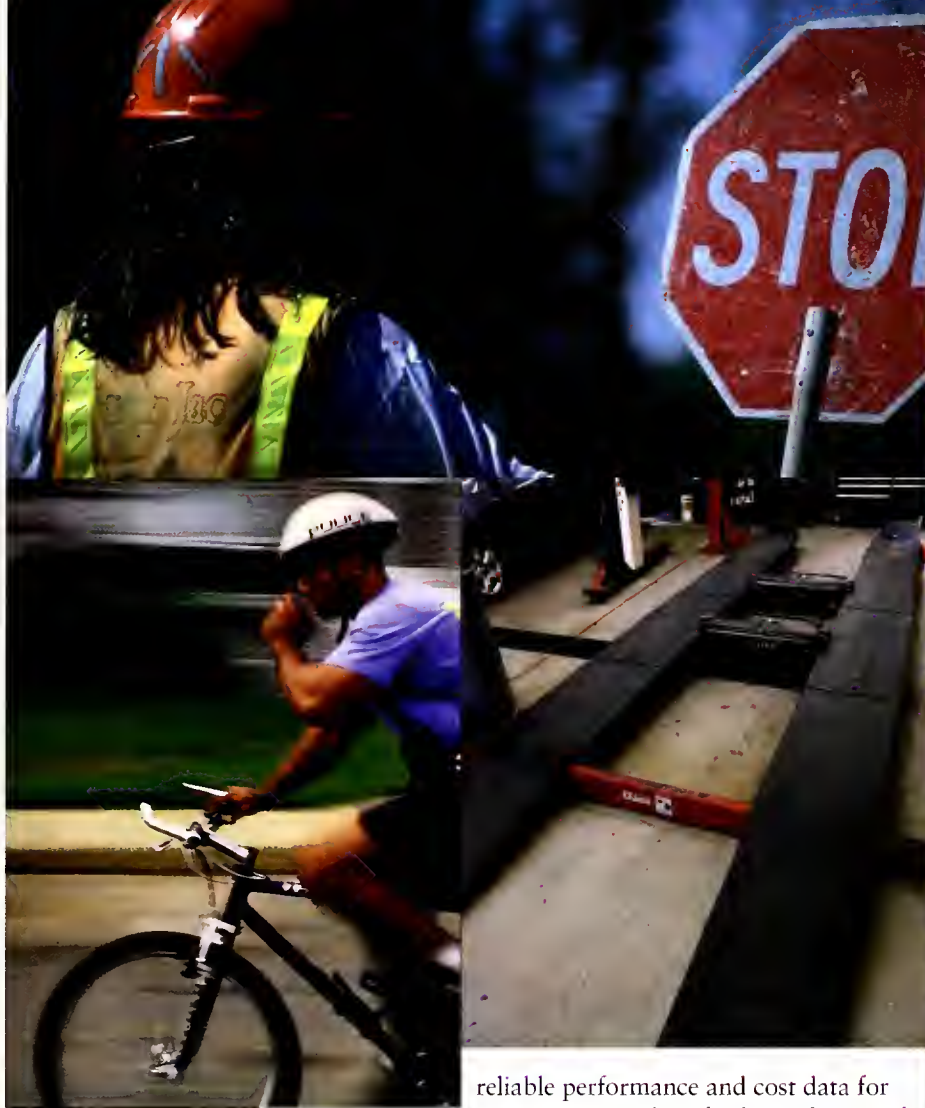
the North Carolina League of Municipalities hosted a meeting of city managers from the state's larger municipalities, focusing on privatization. Discussions at this meeting turned to the topics of competition, performance measurement, and, eventually, cooperative benchmarking.[4] In 1995, local officials who were affiliated with the North Carolina Local Government Budget Association met to discuss the possibility of creating a benchmarking project. They wanted the capability of examining the performance of their own organizations in the context of performance statistics from other local governments, thinking that even good performers could learn from the practices of others. The pilot phase of the benchmarking project started in fall 1995 after the Institute of Government hired a project coordinator.

The following three goals guide the benchmarking project: (1) develop and expand the use of performance measurement in local government, (2) produce reliable performance and cost data for comparison, and (3) facilitate the use of performance and cost data for service improvement. By February 2007, the project had produced eleven reports containing data on the performance and the costs of service delivery in participating municipalities. The larger story, however, is participating municipalities' use of statistics on comparative performance to enhance their performance measurement systems and to improve service delivery.

Methodology

The findings reported in this article were derived from a review of the experiences of the fifteen municipalities that participated in the benchmarking project during fiscal year 2004–5: Asheville, Cary, Charlotte, Concord, Durham, Gastonia, Greensboro, Hickory, High Point, Matthews, Raleigh, Salisbury, Wilmington, Wilson, and Winston-Salem. Municipal representatives were queried in an e-mail survey in spring 2005. The survey was followed by in-person interviews and subsequent telephone and e-mail contacts in summer 2005.

Improvement of Service Efficiency and Effectiveness

The survey asked local officials whether the benchmarking project's performance and cost data had supported operational change in the service areas under study. When changes had been made, the survey asked for specific examples. Some of these examples are noted in the following sections and are substantiated by clearly documented outcomes. Others are more recent initiatives with promising but unconfirmed results. Operational changes tied to the benchmarking project data were documented in eight of the ten service areas: residential refuse collection,

Takaaki Iwabu / Raleigh News & Observer

service by city crews into the affected neighborhoods without adding staff or equipment. This move improved efficiency and produced annual savings of approximately $395,000.[6]

Household Recycling
Comparative statistics for household recycling helped Asheville municipal officials monitor the effects of service expansion. Program changes yielded an increase in the rate of waste diversion from 14 percent in 1998–99 to 24 percent in 2003–4. The principal impact of program success has been the extended life of the Buncombe County landfill.

Benchmarking data helped Wilmington officials decide to privatize the household recycling program, producing an annual savings of about $75,000.[7] This change in service delivery also decreased the cost per ton collected from $308 in 1994–95 to $234 in 2000–1 (see Figure 1). Further expansion of the program decreased the cost per ton collected to $128 by 2003–4.

household recycling, yard waste and leaf collection, police services, emergency communications, asphalt maintenance and repair, fire services, and fleet maintenance.

Residential Refuse Collection
The participating municipalities have used benchmarking data most frequently in the service area of residential refuse collection. Hickory, for example, used the comparative statistics to justify automated collection with one-person crews. The city reduced its cost per ton collected from $98 in 1995–96 to $69 in 2003–4, a savings of $29 per ton.[5]

Concord used the benchmarking data to negotiate more favorable terms with its private hauler. The city was paying $7.07 per collection point when its refuse collection contract expired. The private hauler's proposal for a new contract called for payment of $7.76 per collection point. The city countered using data from the benchmarking project that showed Concord's service costs to be relatively high and the contractor's service quality to be relatively low in comparison with costs and quality in other municipalities. The parties agreed to continue the service at a rate of $7.07 per collection point,

subject to adjustments tied to changes in the Consumer Price Index and fuel prices.

One of the major success stories during the decade-long history of the benchmarking project was in this service area. Winston-Salem used a private hauler to provide residential refuse service to about 6,500 households. After the benchmarking data revealed underused capacity within the city's own operations, it discontinued its contract with the private hauler and extended

Concord has used benchmarking data to assess the possibility of altering truck and crew configurations. Hickory has used the data to evaluate the cost per collection point, for contract negotiations.

Yard Waste and Leaf Collection
Comparative statistics for yard waste and leaf collection supported the use of seasonal labor in Hickory and justified a recommendation for a leaf machine in High Point. The program

change in Hickory helped reduce the cost per collection point from $51 in 2001–2 to $30 in 2003–4. Analysis in High Point showed that the new equipment would reduce the cost per ton collected.

Police Services

Although most of the implementation examples focus on service efficiency, some are aimed at improving service quality. Greensboro, for example, used the bench-marking results in a management study of police patrol staffing.[8] The study found that Greensboro was below average in number of sworn officers per 1,000 residents and had a slower-than-average response time for high-priority calls when compared with Durham, Raleigh, and Winston-Salem. A workload analysis indicated a "patrol-availability factor" of only 6.6 percent, signaling little ability to engage in proactive patrol. In response, city officials presented staffing options to the city council (see Table 1). The city council eventually approved an additional thirty-two sworn officers for its police department to increase proactive patrol and to decrease crime in specified neighborhoods.

Other examples of data use in police services included analyzing a proposal

to add a patrol beat in Cary, gauging the efforts of community policing in Concord, and investing in a telephone-response unit to reduce calls per officer in Wilmington.

Emergency Communications

Asheville eliminated three dispatcher positions in emergency communications following an analysis of the bench-marking results. This action allowed the

Figure 1. **Household Recycling in Wilmington**
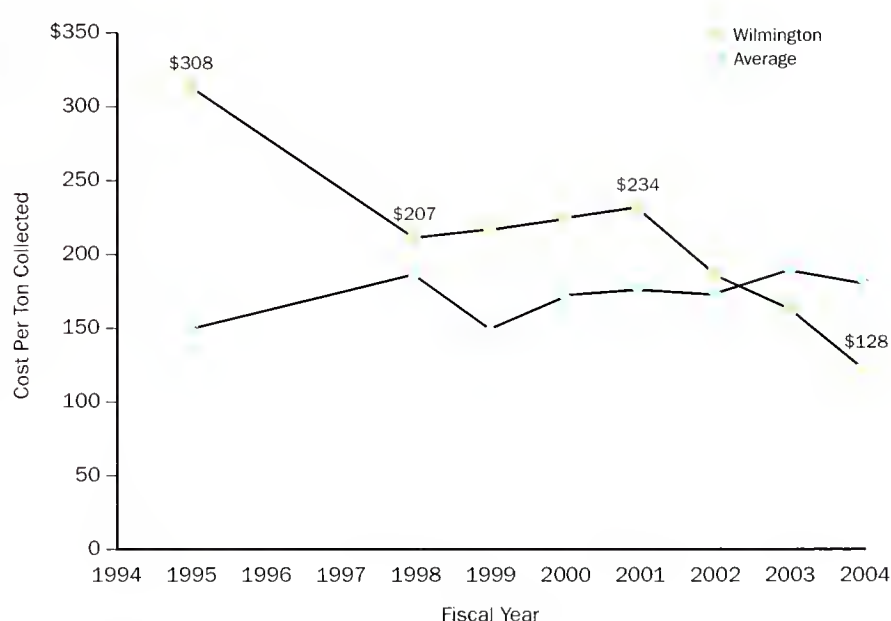
Note: Data were not collected for 1996 and 1997. The service in Wilmington was privatized in the middle of 1998.

Table 1. Staffing Options for Police Patrol in Greensboro

	Additional Officers	Administrative Time	CFS Time*	Proactive/ Patrol Time	Increase
Current	—	20.5%	72.9%	6.6%	—
Option 1	17	20.5	68.0	11.5	5%
Option 2	37	20.5	63.0	16.5	10
Option 3	60	20.5	58.0	21.5	15
Option 4	99	20.5	51.0	28.5	22

*CFS = calls for service, the percentage of time that patrol officers spend responding to service calls.

city to reallocate more than $100,000 to other programs.

Cary officials used the benchmarking project's comparative statistics to identify the need for an additional supervisory position in emergency communications. Concord employed the statistics to make changes that led to an Insurance Services Office (ISO) rating improvement. An ISO rating indicates the "fire readiness" of individual communities as an information service to potential insurers.[9]

Asphalt Maintenance and Repair

Deciding on the amount of resources to appropriate for asphalt maintenance and repair is an annual challenge faced by municipal officials. Typically, administrators urge adherence to a policy that calls for the municipality to resurface a specified number of lane miles every year. Depending on revenue projections, however, municipalities sometimes defer this capital investment in favor of other programs. With the support of the benchmarking results, several jurisdictions have solidified their ongoing commitment to a systematic street-resurfacing program.

Two municipalities have used the comparative statistics to analyze the

cost-effectiveness of using in-house crews versus contract crews for resurfacing projects. Asheville decided to use contract crews for additional projects. Concord opted to increase in-house capacity.

Hickory used the comparative statistics to justify a new automated patch truck for pothole repair. The city reported 85 percent of potholes repaired within twenty-four hours in 1997–98, which was well below the benchmarking group average of 96 percent. After the capital investment, the city reported 97 percent of potholes repaired within twenty-four hours in 2001–2, which was slightly above the group average of 95 percent for that fiscal year.

Fire Services

Some municipalities have used the comparative statistics to analyze the need for fire personnel. As a result of its analysis of fire inspectors' workloads, Cary established a staffing plan for determining when to add new inspectors. High Point used the comparative statistics to analyze and approve a request for twelve new firefighters in response to a merger with two volunteer stations.

The most notable use of comparative statistics on fire services occurred in Hickory. The city's high cost per response suggested the underutilization of personnel and equipment and prompted a decision to begin responding to emergency medical calls as well as fire incidents. This increase in workload allowed the fire department to spread its fixed costs across more calls for service. That substantially lowered the department's cost per response, from $3,246 in 1998–99 to $1,832 in 2003–4. The workload change apparently had some impact on average response time to high-priority calls, which increased from 4.0 minutes to 4.4 minutes during the same time period.

Fleet Maintenance

Asheville and Hickory used the benchmarking results to establish productivity goals for billable hours, turnover of parts, and percentage of rolling stock available per day. Also, the benchmarking data prompted an analysis of fleet maintenance in Concord, which is described in the following section.[10]

Figure 2. **Fleet Maintenance in Concord: Hours Billed as a Percentage of Available Hours, Fiscal Year 2001-2**
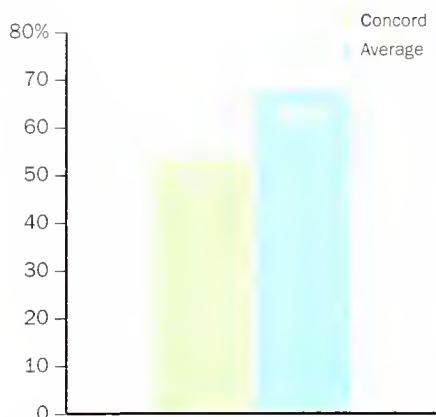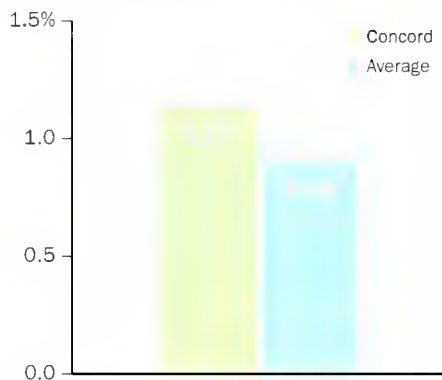

Figure 3. **Fleet Maintenance in Concord: Percentage of Work Orders Requiring Repeat Repair within 30 Days, Fiscal Year 2001-2**

Analysis of Fleet Maintenance in Concord

Comparative performance and cost data for fleet maintenance were collected and reported for the first time in the *Final Report on City Services for FY 2001–2002*.[11] The data for Concord, when compared with the data for other participants in the benchmarking project, revealed several potential problems, including low shop productivity (see Figure 2) and excessive repeat repairs within thirty days (see Figure 3). Concord also had experienced a relatively high number of breakdowns of equipment while it was in use, which affected the productivity of the departments needing to use the equipment.

Scheduled maintenance is the most cost-effective, productive form of vehicle maintenance. By emphasizing preven-

tive maintenance, it decreases the likelihood of costly breakdowns. In Concord the work of fleet maintenance increasingly consisted of unscheduled maintenance (repair of breakdowns) and decreasingly of scheduled maintenance (preventive maintenance).

Analysis

A review of comparative benchmarking data alerted Concord officials to the presence of underlying problems. Concord's marks did not compare favorably with those of other municipalities. Closer examination revealed several causes. Before introducing the measures of the benchmarking project, fleet management collected few measures and was largely unaware of performance shortcomings. Mechanics' workdays were not carefully scheduled, and mechanics were given no

performance targets or guidelines for job efficiency or shop productivity. Procedures for state inspections, preventive maintenance, and scheduling and prioritizing work were inefficient. Also, the method for buying parts increased vehicle downtime. Warranty issues were not weighed against downtime. Lack of communication between fleet maintenance and other city functions increased repair costs. Fleet maintenance software was cumbersome and consumed excessive amounts of management's time. Furthermore, vital scheduled maintenance was not being performed.

Actions

Concord officials acted to increase accountability. They set performance standards for mechanics and provided them with monthly reports on indi-

vidual and team productivity accomplishments. Also, they created check sheets on preventive maintenance to ensure quality and promote accountability.

Further, they brought federal and state inspections in-house, saving the cost of outsourcing and travel time. They changed purchasing practices to promote competition. They made arrangements with multiple vendors for the quick purchase of parts to increase the percentage of repairs completed within twenty-four hours. They focused greater attention on systematic replacement of worn equipment, carefully flagging vehicles near retirement to reduce unnecessary maintenance.

Additionally, they reorganized the second shift of mechanics and focused its efforts on preventive maintenance rather than repairs. They created special forms (called "trouble forms") to improve communication between first- and second-shift supervisors. Finally, they directed special attention to preventive-operation checks in an effort to reduce unscheduled maintenance work orders.

Concord officials found that they could implement all these changes and still eliminate one management position in fleet maintenance.

Outcomes

The operational changes helped drop maintenance costs per mile traveled from 18 cents in 2002 to 15 cents in 2005. The decrease represents a three-year savings of about $120,000 for fleet maintenance. Also, the elimination of a management position created an annual savings of approximately $45,000. Hours billed as a percentage of hours paid to mechanics increased from 53 percent in 2001–2 to 70 percent in 2003–4. The percentage of work orders completed within twenty-four hours increased from 81 percent to 86 percent, and the percentage of work orders requiring repeat repairs within thirty days decreased from 1.1 percent to 0.4 percent during the same period.

Another area of improvement was replacement of transmissions. After the program implemented a preventive maintenance program on transmissions, the number of transmissions replaced decreased from twenty-four in 2002 to five in 2005.

Concord officials had collected a host of basic workload measures for fleet maintenance, but they found that higher-order measures of efficiency and effectiveness were more useful than workload measures in diagnosing problems and improving operations. Fleet managers now track these measures monthly rather than annually.

Concord officials also found that sharing performance information and getting those actually doing the work to buy in to proposed changes—as they did with fleet mechanics—are crucial to successful performance management.

Utility of Efficiency and Effectiveness Measures

The benchmarking project compiles three types of performance measures for each service area under study: workload, efficiency, and effectiveness. Workload measures are important for providing information on service demand (for example, the number of applications processed, arrests made, meters read, and so forth), but they simply report how much work has been done. Efficiency and effectiveness measures are considered higher-order measures. They report on the relationship between inputs and outputs (efficiency), on the one hand, and the quality or impact of service (effectiveness), on the other hand. Municipalities that were more active in using performance measures to improve operations tended to rely more on measures of efficiency and effectiveness, rather than simply on raw workload measures.[12]

Several municipalities participating in the benchmarking project were prompted to make changes in their operations when they compared their efficiency with that of their counterparts. In fact, a majority of respondents indicated heavy reliance on efficiency measures. This should not be surprising, given the benchmarking project's emphasis on cost accounting from the outset. Participating officials have gained confidence in these measures over the years and have come to rely on them.

Judith Siviglia / Raleigh News & Observer

In fact, several of the officials have credited the benchmarking project with providing them with the ability to calculate accurate and reliable efficiency measures for the first time.

The total cost in each service area, including direct costs (personal services and operating expenditures), indirect costs (overhead for staff support), and capital costs (depreciation), is determined to ensure comparability across multiple service providers. The total cost is then used to calculate the resources consumed per service output.[13]

Another reason for the heavy reliance on efficiency measures, according to the respondents, is that program managers respond more readily to changes in efficiency than to changes reflected by quality indicators. Several of the respondents reported that elected officials also tend to focus more on service efficiency than on service quality. One possible reason for this focus is that elected officials are keenly aware of the importance of cost control in the public sector. Understandably, they prefer to avoid an increase in the property tax rate.

Refinement of Measures

Although respondents reported a host of benefits from participating in the benchmarking project (see the sidebar on page 40), one of its fundamental benefits has come in helping participating municipalities improve the quality of their performance measures, not only in service areas included in the project but in others as well, indirectly.

Within service areas included in the benchmarking project, participants have tackled some thorny measurement problems and resolved them to the group's satisfaction. A review of household recycling, for example, revealed problems of inaccuracy and inconsistency in the calculation of household recycling participation rates. To remedy this problem, project participants established a uniform effectiveness measure, reporting the community set-out rate (percentage of households setting out recycling bins).

Another example comes from the service area of fleet maintenance. After the service area became part of the benchmarking project, participants thought that the number of rolling stock units per

full-time-equivalent technician would provide useful feedback on workload and efficiency. Subsequent review revealed that a more robust measure was needed to track this service dimension. The measure was changed to number of vehicle-equivalent units per full-time-equivalent technician, a weighted statistic of the maintenance effort associated with different classes of vehicles. This measure is more aligned with industry standards.

Several municipalities credited their participation in the benchmarking project as a catalyst for improving their performance measurement systems organization-wide. Local officials reported that the project's focus on meaningful performance statistics has improved the quality of measures being tracked and reported even in service areas outside the project's scope. This finding provides evidence that the benchmarking project is making progress toward its first goal: to develop and expand the use of performance measurement in local government.

Conclusion

This review of the benchmarking experiences of the fifteen municipalities that participated in the benchmarking project in 2005 reveals that the municipalities have used comparative statistics at the program level to support a variety of decisions about service delivery. Prior research has suggested that time is a factor in moving from collection of measures to actual use of them in management decisions.[14] Indeed, some of the municipalities that have the most experience in performance measurement and the longest participation in the benchmarking project were among the leaders of this group in the use of performance data. Time is no guarantee, however. Even some municipalities with shorter experience in performance measurement have moved beyond reliance on raw workload measures and now are using measures of efficiency and effectiveness as they convert information into action.

Notes

1. Patricia de Lancer Julnes and Marc Holzer, "Promoting the Utilization of Performance Measures in Public Organizations: An

Empirical Study of Factors Affecting Adoption and Implementation," *Public Administration Review* 61 (2001): 693–708.

2. Comparison of performance statistics is one of three approaches to benchmarking in the public sector. *See* David N. Ammons, "Benchmarking as a Performance Management Tool: Experiences among Municipalities in North Carolina," *Journal of Public Budgeting, Accounting and Financial Management* 12 (2000): 106–24.

3. For the definition of each service area, *see* William C. Rivenbark, *Final Report on City Services for Fiscal Year 2003–2004* (Chapel Hill, N.C.: School of Government, University of North Carolina at Chapel Hill, 2005).

4. Paula K. Few and A. John Vogt, "Measuring the Performance of Local Governments," *Popular Government*, Winter 1997, 41–54.

5. The savings reported in this article are stated in current dollars rather than constant dollars. If adjusted for inflation, the reported savings would be greater.

6. Ann Jones, "Winston-Salem's Participation in the North Carolina Performance Measurement Project," *Government Finance Review* 13, no. 4 (1997): 35–36.

7. David N. Ammons, "Benchmarking as a Performance Management Tool: Experiences among Municipalities in North Carolina," *Journal of Public Budgeting, Accounting and Financial Management* 12 (2000): 106–24.

8. City of Greensboro, Budget and Evaluation and Police Departments, *Patrol Staffing Study* (Greensboro, N.C.: 2004).

9. David N. Ammons, *Municipal Benchmarks*, 2d ed. (Thousand Oaks, Calif.: Sage Publications, 2001).

10. For information on additional case studies, *see* William C. Rivenbark, David N. Ammons, and Dale J. Roenigk, *Benchmarking for Results* (Chapel Hill, N.C.: School of Government, University of North Carolina at Chapel Hill, 2005).

11. William C. Rivenbark and Matthew H. Dutton, *Final Report on City Services for Fiscal Year 2001–2002* (Chapel Hill, N.C.: School of Government, University of North Carolina at Chapel Hill, 2003).

12. For more information on factors that increase the likelihood of local officials using performance and cost data to influence management decisions, *see* David N. Ammons and William C. Rivenbark, "Factors Influencing the Use of Performance and Cost Data to Improve Municipal Services: Evidence from the North Carolina Benchmarking Project," *Public Administration Review*, forthcoming.

13. For more information on the benchmarking project's cost accounting model, *see* William C. Rivenbark, ed., *A Guide to the North Carolina Local Government Performance Measurement Project* (Chapel Hill, N.C.: School of Government, University of North Carolina at Chapel Hill, 2001).

14. *See* note 1.

Hands on the Pulse, Eyes on the Future

John B. Stephens, Editor

OF GOVERNMENT **75** *YEARS* · SCHOOL OF · UNC CHAPEL HILL

In August 2006, Ann Simpson, associate director for development, and I organized a roundtable discussion by selected School faculty members (see the sidebar on this page). We were seeking their wisdom and reflection on the topic "The School of Government: Past and Future." Sitting in on the discussion were numerous other faculty members and School leaders, several of whom asked questions or made comments (see the sidebar). Following are the highlights of the discussion.

Richard B. Whisnant: Seventy-five years ago, Albert and Gladys Coates brought into being Albert's vision of an Institute of Government that would improve the lives of North Carolinians. D. G. Martin, a distinguished journalist and political observer in North Carolina, recently listed the founding of the Institute of Government as one of the defining events in North Carolina history. In 2001 the University administration showed its support and appreciation of the work of the Institute by elevating it

to a full School of Government. In 2006 much of the United States world of higher education, led in significant part by our administration at UNC at Chapel Hill, acknowledged the engaged university as the model toward which American higher education should work.

Today, through this dialogue, we want to gain faculty perspective on the needs of North Carolina citizens: how those needs have changed over time, how we as a faculty are responding to the changing needs, and what we need

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The Cast (in order of appearance)

Panel Moderator and Members

Richard B. Whisnant, moderator: faculty member since 1998; specialist in environmental protection and natural resources management, and administrative law.

A. John "Jack" Vogt: faculty member, 1973–2006; specialist in public finance. Entered phased retirement in 2006.

Robert L. Farb: faculty member since 1976; specialist in criminal law and procedure.

Shea Riggsbee Denning: faculty member since 2003; specialist in local taxation (2003–7) and courts and criminal law (2007–).

David M. Lawrence: faculty member since 1968; specialist in local government law and local government finance.

Anita R. Brown-Graham: faculty member, 1995–2007; specialist in community and economic development. Director of the Institute for Emerging Issues, North Carolina State University, since January 2007.

Contributors from the Audience

A. Fleming Bell, II: faculty member since 1982; specialist in local government law, parliamentary and board procedure, and government ethics.

Michael R. Smith: faculty member since 1978; Institute of Government director, 1992–2001; School of Government dean, 2001–.

John L. Sanders: faculty member, 1956–92; Institute director, 1962–73 and 1979–92.

Janet Mason: faculty member since 1982; specialist in juvenile law, social services law, adoption, and marriage law.

David N. Ammons: faculty member since 1996; director of the MPA Program, 2001–6; specialist in productivity improvement in local government, performance measurement, and benchmarking.

Frayda S. Bluestein: faculty member since 1991; associate dean for programs, 2006–.

Jill D. Moore: faculty member since 1997; specialist in public health law.

Maureen M. Berner: faculty member since 1998; specialist in program evaluation, and research methods and survey methodology.
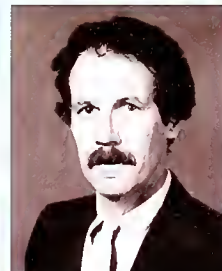
Whisnant   *Vogt*   *Farb*   *Denning*   *Lawrence*   *Brown-Graham*

Constancy and Change in Clients' Needs

Whisnant: Think about the needs of the people you serve regularly: How have they remained constant, and how have they changed over the time you've been working at the Institute and the School?

A. John "Jack" Vogt: One thing that has stayed the same is that clients—city and county officials—are calling us and asking, "What is the proper way to follow this law?" or "How would you interpret this law?" and we continue to answer those types of questions.

Robert L. Farb: Criminal law and procedure, among all the areas of law, is probably the most dynamic: It can change on a dime. The United States Supreme Court can issue a decision that causes people in all fifty states, including North Carolina, to change their practice—immediately. The same with the North Carolina appellate courts. It happens less often, but it does happen. In the time I've been in North Carolina, we've been under three sentencing systems.

The law has always been dynamic, but it's gotten more complex over the years, responding to different interests from the prosecution and the defense.

Because the law can change on a dime, we have to respond very quickly to get the word out.

Shea Riggsbee Denning: It's my perception that, in the last ten years or so, our local governments are becoming even more sophisticated and more creative, and the transactions into which they're entering are becoming more complex. One of the things that I've noticed, particularly from the tax collectors, is that they're now dealing with legal issues beyond those associated with the collection of property taxes. For example, they must now collect all kinds of fees and other sorts of taxes with which they didn't largely concern themselves for many years.

Another example is the frequency with which people in North Carolina file for bankruptcy. So our tax collectors are not only expected to know about the local laws that govern collection of property taxes, but they also have to know "How do I handle this situation, and how do I interact with these federal laws, federal judges, and federal procedures?" when a particular taxpayer has filed an application for bankruptcy.

David M. Lawrence: A lot of the greater complexity has to do with the educational level of people in local government. I've worked with city attorneys and county attorneys since 1968, and obviously they've always had graduate degrees. But formerly a lot of local government officials were high school graduates. Over time we've seen more and more college graduates. In finance we now see significant numbers of CPAs with, in many cases, graduate degrees. That means they're much more willing to try more complicated sorts of initiatives.

I've been working in bond financing for thirty years. When I started, most bond financing was what bond attorneys call "plain vanilla financing"—general obligation bond financing. You have a referendum, you issue the bonds. Less than half the bonds issued these days are done that way. Rather, local governments use much more complicated kinds of financing. GASB—the Government Accounting Standards Board—didn't exist fifteen years ago. There was a more rudimentary organization that occasionally issued governmental accounting pronouncements, but it didn't have anything like the agenda that GASB does. So the work that we do in accounting is very different.

The demographics of the people we work with have changed too. When I started, there was one female county attorney. If there were any female city attorneys, I didn't know who they were. I was in a law school class that had 500 people, and only about 20 were women. That's changed dramatically. Minority participation in our programs and among our clients has changed a lot, and I've noticed over the years that our clients get younger all the time.

Anita R. Brown-Graham: The theme of increased complexity is certainly at the core of change in community and economic development. Twenty years ago, most local governments weren't very active in economic development. In community development, their responsibility was mainly to implement federal grants. The federal government played a dominant role in the field: there was very little to do other than implement those grants.

Today, global forces, the evolution of the federal government, and a different role taken by North Carolina's state government necessarily mean that local governments are where the rubber hits the road in community and economic development. As a result, our local government clients are becoming more sophisticated, much more innovative, in their work.

Ten years ago a call from a local government would be a very technical question: "How do I do this out of the community development block grant?" Now I rarely get questions like that. In fact, what's different about my work today is that for most of the questions I get, I really can't give a simple answer. That's because in many ways, they're not calling for the kind of expertise that is common in the work that Shea and Bob are doing. Instead, they're looking for a role from us much more like a facilitator. They call me and say, "How do we put together a public or private partnership that will work?" Part of my job is to ask them lots of questions to make sure I can ascertain their interest, and then point them in many directions so that they can see lots of different examples of how a partnership has worked.

Speed of Response: Phone and Computer versus Letter

Farb: In 1976, when I came here, I was given an IBM Selectric typewriter, a telephone with no voice mail, and some white-out to change any of the mistakes I made when I typed. Today when appellate cases are decided, I send summaries out to our listserv of about 1,900 people on the day of the decision or shortly thereafter. That is a big difference from years ago. Then you might wait two or three weeks to get a copy of a United States Supreme Court opinion. Today you get it the same day, and you send it out. So the speed in getting things out, and people relying on you to get the word to them, put more pressure on you to get your job done. You have to

Faculty member Vaughn Upshaw, standing, leads a program for city and county elected officials and their managers on manager evaluation and board self-assessment.

write without editing, make sure you analyze an opinion correctly in a neutral fashion, and get it out.

Lawrence: Jack said that when he started, people called him with lots of questions. I don't think that's true. People *wrote* us with lots of questions, up through the 1970s. We weren't on the phone that much. I think a lot of the clients thought that calling long distance was too expensive, so most of my contacts with clients were by letter. People would write a letter, and I would write one back. It was, in a lot of ways, a much more leisurely process than it is today, when they write me an e-mail and expect to get something back very quickly.

Interaction with the Private Sector

A. Fleming Bell, II: How would each of you view our role in dealing with what's called "the private sector"? How has that changed in your fields?

Vogt: Twenty-five to thirty years ago, local government finance officers' conferences and meetings were composed almost entirely of local government officials. Now investment bankers, representatives from public accounting firms, and other private-firm persons may account for as many as a quarter of the

total attendance at these conferences and meetings.

Lawrence: Most city and county attorneys are in private practice, so we've been working with those kinds of private-sector professionals for a long time. I also get lots of telephone calls from attorneys representing people interacting with local governments. I think we've generally felt comfortable talking with them.

One model of advising government people and private-sector folks was the approach used by Phil Green [faculty member, 1949–89; specialist in law of planning, zoning, building codes, and land development]. Phil used to have conversations with lawyers on both sides of an issue—say, a zoning litigation issue—and he would arrange a conference call and talk to both of them at the same time. We've frequently worked with the private sector in that way.

Brown-Graham: I see a lot of private-sector clients in my work. I try to define my clients as "whoever is carrying out the function for the local government." Increasingly in community and economic development, it's either a private not-for-profit corporation or even a for-profit corporation.

Denning: In the tax field there's a fair amount of involvement by the private

sector, both on their own behalf and in carrying out functions that the local government isn't staffed to carry out. In many of the classes I teach, there are appraisers for private appraisal firms that are carrying out revaluation work for counties, essentially performing a county function. Just yesterday I was on the phone with private attorneys representing a taxpayer, asking about my view on a particular legal issue that I discussed separately with both the assessor and the private attorneys.

Whisnant: Across the Institute, we don't make sharp distinctions between private sector and public sector in many of the things we do. In the environmental field, we've been running a yearlong class on stormwater management, which we marketed to local government officials. But without our trying to bring them in, we got so much demand from the consulting engineering world and other folks who do contract work with local governments that we just decided to open it up to them as well.

Lawrence: I'll add another example of that: The law requires that local governments have their books audited every year by CPAs. So for many years, we have—Greg Allison [faculty member since 1997; specialist in governmental accounting and financial reporting] has done this particularly—trained CPAs in

governmental accounting so that they can do that work better.

Interaction with the Media

Whisnant: How have the media played a role during your time as a faculty member?

Farb: Reporters often call me about pending trials. I don't comment on pending trials. I've made it a practice because I don't think it's appropriate. I don't know the facts. And if I do comment, I say, "The Institute says x, y, and z," and it's based on facts presented by the questioner.

The other day a Raleigh *News & Observer* reporter called. I've known this reporter long enough, and I realized she was just asking for background. So I assisted her in understanding the law that related to the issue she was inquiring about. I try to assist reporters because I know they're trying to write a story.

Bell: Do you help them understand new laws that have been passed?

Farb: I would, but I generally don't get those kinds of calls. The reporters who call me are more interested in a particular case that's pending, a particular charge that's been brought. That's the story they have, and they have to write it tomorrow.

Lawrence: We get a lot of calls from local government reporters where the local government has done something and they want to know, "Is that 'something'—fill in the blank—legal?" You don't want to say, based on the information the reporter has given you, "Clearly the local government has done something illegal." But you don't want to protect a local government that's gone off and done something fairly awful. You try to explain what the law is, and let the reporter apply the law as you've stated it to the facts that the reporter may have. It's a very delicate balance to maintain.

Denning: You want to make sure that you're very careful in answering the question and drawing the balance. It's important to do that because in essence they're a representative of the public. In some ways, that's the only way the public gets its explanation of a particular law. One of my most recent and most pleasant encounters was with a

reporter with whom I spent about twenty minutes on the telephone. I picked up the newspaper the next morning with my eyes closed, practically saying, "What did he say I said, or what did I say?" To my delight, my name was nowhere in the story.

Vogt: The School of Government has conducted workshops for local government reporters. One I was involved with was organized by Gordon Whitaker [faculty member since 1997; specialist in public administration], and it took place over on campus. I've also made presentations at School of Journalism workshops for reporters who cover government. My role was to point to some of the issues in local budgeting and finance that are important and deserve coverage. Our teaching or training of reporters or aspiring reporters about finance and other issues can help public officials carry out their roles in the long term.

Whisnant: The environmental area is like the tax area in some respects. The calls that I get from reporters tend to be more wandering. They're trying to understand the background of a complicated, often technical, problem. I don't believe our media people are very savvy in the environmental area. There's not a developed environmental-journalism sector, as there may be in criminal law or even local government reporting. I do think it's important to give them information as much background information as possible.

Assessment of Demand and Needs

Whisnant: How do you assess demand—clients' needs? Is it just a subjective sense —based on the phone calls coming in or the other ways you keep your finger on the pulse?

Farb: I consider answering phone calls and e-mails to be a very important part of a faculty member's job. Phone calls and e-mails inform me what I might need to teach at the next conference or what I might need to write or consult about.

Brown-Graham: That's right: our ongoing interactions with our clients give us a lot of insight into trends, what they're experiencing, what they need from us, how that might look different

from what we have in our current frame of reference. And once the trends begin to emerge, we need to be much more proactive in engaging clients and asking them explicitly how we can support them, sometimes asking them the difficult question "What things shall we not do, in order to do more of the things that you tell us are emergent needs?"

Lawrence: The School has had specific processes of planning for the future. The most recent one was three or four years ago. We divided into large faculty groups and came up with proposals for expansion. I recall a few earlier efforts when we used formal structures to come up with ideas for faculty and program expansion.

Michael R. Smith: One of our core values is responsiveness. Faculty are on the front lines in a variety of ways: telephone, e-mail, and class sessions. That helps them learn what public officials need. The greatest challenge is finding a balance between existing needs and emerging issues separate from what our clients are requesting.

I think we've had success identifying new needs and fields. The Future Search process [in 1994] brought forty carefully selected, representative clients into the room with all of us for about three days to ask, "Where should we be going?" They identified some new themes that we've followed, like public technology needs and civic education. A great challenge is that public officials can imagine new areas of work, but they're not nearly as good at deciding how we should free up resources. It will always be a challenge to balance the things we add, with the things we stop because officials are more sophisticated and might not have the same needs.

John L. Sanders: One characteristic of this organization is that it has always been responsive to clients in their fields of interest and has adapted its programs to meet those needs and interests, rather than the Institute or the School prescribing areas of responsibility and concern and then hoping that someone would find them useful. The primary stimuli come from the field: faculty respond to requests as they see fit, in light of their professional judgment. Clients' needs, as this

During a School-sponsored course, Darlene Yudell (left), of Guilford County (N.C.), Alexias Anderson (center), of Clemson (S.C.), and Wilmer Melton, of Kannapolis (N.C.), discuss the role of information technology in local government.

organization finds them, have been the driving force. It isn't a very tidy, orderly way to go about program planning, but it has generally worked.

Vogt: When I first came to the Institute, Jake Wicker [faculty member, 1955–91, who served in retirement until 2004; specialist in local government law] said, "I want you to go out and meet some local government officials, including local government managers." I went to Salisbury and met the city manager and several of his staff members, and I met the Iredell county manager. There were many other trips, after that. A couple of us had a term to describe such trips: "bloodstreaming."[1] Because of more limited phone service then, we didn't have the constant contact with clients by phone and e-mail, so I think it was more important. Jake kept telling me, "You need to get familiar with some of the interests of local government officials."

Farb: It's also important to keep in mind whether we should continue a program. In the criminal law field, we could have a large staff and be teaching basic law enforcement if we wanted to, but other institutions have undertaken that responsibility.

Janet Mason: In the courts group [about eight faculty members who work

with officials in the judicial branch], we meet as a group at least once a month. That way we have a better, more regular sense of what our clients' needs are and also what each of us is doing and whether that fits together and is responsive.

Lawrence: Jack's right: bloodstreaming was a value when both of us came here a long time ago, and that's continued over time. I was glad to see a new colleague, Kara Millonzi [faculty member since 2006; specialist in municipal and county finance law], going out to a number of local governments in the last four or five months.

Denning: I spent a week in the Forsyth County tax office shortly after I arrived, at the invitation of the tax assessor there. The perspective you gain when you see what's happening in a particular county or city is quite different from anything you can get in any other way. The resulting relationship is important, too.

Brown-Graham: Bloodstreaming is incredibly important to our understanding the external context—equally important to our understanding this institution. And I would advise young, new faculty members to be intentional about engaging with School of Government colleagues who might be in fields completely separate from their own. In many ways the very complexity of the

issues that our clients face forces us to have to rely on each other—to go outside of our fields to try to find some of the answers that our clients may be seeking.

The MPA Program and the School: Preparation of Future North Carolina Government Workers and Institute Clients

Whisnant: One important development at the School has been the arrival of the Master of Public Administration Program [in 1997]. It's changed the flavor of the School in a lot of ways, both in the faculty and in the students. What opportunities has the MPA Program given you to do your traditional Institute work in a different way, and what are your thoughts on the Institute and the MPA Program evolving together over the next ten years or so?

Vogt: I look on the MPA Program as preparing future public leaders and administrators for North Carolina state and local government, as well as government beyond the state. We can point to the county manager of Mecklenburg County, the city manager of Raleigh, the county manager of Wake County, the county manager of Durham County— all alumni of our program. The program has also done a good job in preparing entry-level people, young people who

take jobs as budget analysts and other positions in local government. Our MPA Program has made a valuable contribution to the state.

Lawrence: One time during the 1980s, I taught a local government law course in the MPA Program when it was administratively in the Political Science Department. Today I teach occasionally in someone else's courses, so for me, its being here [administratively] hasn't really made a difference. I would echo what Jack said, though: Many of the students I taught in the 1980s have gone into city and county management. Our having had them as students creates connections that are valuable professionally later on when they're working in government. I think it's a plus for the Institute and the School that the MPA Program is here.

Brown-Graham: I've had a chance to get to know a lot of the students. I'm always appreciative when they come seeking professional and personal advice because it makes me look more together than I really am. I find that I have ongoing relationships with many of those students long after they leave the School of Government. So even for faculty who don't play a more formal role in the MPA Program, there continue to be significant benefits to having it in this building.

Lawrence: This and other MPA programs have had a big impact on the nature of the kinds of people who become city and county managers. When I started, many managers were engineers who had risen from engineering or public works departments. Now many more come out of public administration programs.

David N. Ammons: I think the interaction between Institute teaching and MPA Program teaching is good, and we do well in recruiting students

who share the interests of the faculty in the School of Government. In fact, the mission of the MPA Program has been revised to ensure that it is consistent with that of the School. That suggests a very positive relationship, with great promise for the future.

Teaching, Now and in the Future

Whisnant: How has your teaching changed, and how has it remained the same?

Farb: PowerPoint [presentation software] has made all the difference in the world. PowerPoint directs me to be more organized in preparing my presentations, and that's been very helpful.

The other change is the size of the audiences I teach. They have grown enormously. When I came here, there were 174 prosecutors, which are my primary group. As of January 1, 2007, there were 580 prosecutors. I used to teach to about 75 at their largest conference each year. In June 2006 there were 385 in the audience. So it's more difficult. I still take questions, but when I hear a voice, I have to look out and try to find the person who is asking the question.

Lawrence: When I came here, the standard teaching method was lecturing: you stood up and you talked. Those of us who had been to law school maybe brought some Socratic methods into it, but it wasn't the interactive teaching that we do today. In the 1980s and 1990s, we started paying much more attention to the principles of adult education. The importance we place on teaching today reflects the sort of development we've had.

Advising on Short- and Long-Term Projects

Whisnant: What about advising? Bob's already mentioned that communications technology has changed at least the pace

and maybe the volume of advising. Is there anything else you would observe on how advising has changed or stayed the same?

Lawrence: We do a whole lot less of it. In the summer of 1969, I was assigned to be part of the staff for a city and county consolidation effort in Charlotte and Mecklenburg County, along with Jake Wicker, who was staff director, and Rud Turnbull [faculty member, 1969–80; specialist in local government law, elections law, and mental health law]. For almost a year and a half, we did little else but work with the study commission.

At the same time, Joe Ferrell [faculty member since 1964; specialist in property tax and county government] was staffing the local government study commission, which over six years rewrote the fundamental legislation for cities and counties. And concurrently, John Sanders was helping draft the revised N.C. Constitution.

We continued doing a lot of that sort of work into the 1970s because the legislature at the time had no staff whatsoever. Since the creation and expansion of the legislative staff, however, we have had much less experience of that sort of extended consulting.

Vogt: I think there are fewer opportunities for that type of large-scale, long-term advising because the staffs of the General Assembly, state agencies, and local governments are much more sophisticated today. We do a lot of training of these staffs, and we do a lot of one-on-one advising of them on specific issues or questions, especially for local governments. Now and then I've become involved in major projects. To undertake a major project, we have to pull back from what we're doing on a day-to-day or week-to-week basis to make the time needed. Perhaps the General Assembly's upcoming study of state and local government fiscal relationships will involve several School faculty in a significant way.

Brown-Graham: Our advising activity is probably much more field-specific than our teaching, research, and writing. In community and economic development, a lot of the advising is around long-term engagement with state government or a local government

Students in the School of Government's Master of Public Administration Program listen attentively as faculty member Jonathan Morgan makes a point.

or a number of local governments that comprise a region, and there is never any dearth of opportunities to engage in that kind of activity. The real struggle is figuring out where to draw the line because it can go on for years.

Whisnant: You're right, Anita, that it's field-specific. Your experience matches mine. I've been involved in several multi-year, certainly multimonth research projects. I think what we have across the School and Institute is a mixed picture: people who are dedicating most of their time to daily in-and-out, short-term problem solving versus those who are engaging in the longer-term, research-related, advising kind of effort.

Bringing People Together through Listservs

Frayda S. Bluestein: Technology has helped us continue Albert Coates's original idea about public officials coming to the Institute as a physical place to learn from each other. School-managed listservs (see the sidebar on page 48) have created an opportunity for people to come together electronically in a way that's much more efficient for folks. That has improved the nature of advising for some of us who are working with client groups that have listservs. Best practices and

experiences can be responded to and shared so easily. It's so true to the original idea of what the Institute would do, and technology has made it so much easier.

Research and Writing: Learning from and Serving Clients

Whisnant: I'd like to turn to research and writing and tie in to the comments made earlier that our clients are more sophisticated and the transactions are more complicated. Does that mean research and writing demands are more complicated, or are we still doing much the same work now that we were doing twenty or thirty years ago?

Denning: What you need to write about, you learn from talking to the clients, and what you think you might need to write about when you first get here is not necessarily what you ultimately figure out you need to write about. For instance, Bill Campbell [faculty member, 1965–2005; specialist in property tax and environmental protection] wrote a very extensive book about property tax collection. One of the chapters in that book is on collection of taxes and bankruptcy. You might skim over that chapter, thinking the topic's not going to come up very much. Then after you're here

for a couple of years, you realize that clients have all sorts of pretty sophisticated questions about bankruptcy that either they're not willing to ask their county attorney or the county attorney is not a bankruptcy expert and can't answer.

Farb: One of the issues we have and will continue to have is finding the time to write. It's become increasingly more difficult over the years because once you start writing publications, it generates more e-mail and more phone calls. It's a good idea for faculty to take a leave for a few months to get a chance to write, in order to get away from the constant e-mails and phone calls. You just can't write for ten minutes, and then answer phone calls and e-mails, and then go back to writing. My prediction for new faculty is that after six months and after you've written your first publication, you're going to find it more difficult to find time to write because people are going to be attracted to you as a source of information. They'll know you're there.

Vogt: There was a consensus among faculty here for many years—at least as long as I've been here—that the audience for our publications is the public officials of North Carolina and the profes-

sional organizations to which those officials belong. But the younger faculty members, especially those associated with the MPA Program, have to reach that audience and also other audiences. A *Local Government Finance Bulletin* that Shea and Bill Rivenbark [faculty member since 1999; specialist in local government administration] prepared on a revenue-neutral tax rate is a publication addressed primarily to North Carolina public officials and those with whom they work. Bill and Maureen Berner and Willow Jacobson [faculty member since 2003; specialist in human resource management] have to write not only for that audience but also for an academic audience located mainly beyond North Carolina.

I notice younger faculty members writing in different ways to reach different audiences. For example, they'll write something on citizen participation for *Popular Government* and then prepare another version of it for a public administration national journal.

Lawrence: For the lawyers, the kinds of things we write about haven't changed very much. The substance has changed, though, because the law is pretty dynamic. So even in the same field, there will be changes in the law. Also, the presentation of our publications has gotten much more professional in the time I've been here. When I started, a lot of the books were basically bound typescripts. We had one editor. Now we have a full staff in the publications area, and what they put out looks very good, very professional. That's been the big change in the way we do things in publications.

Jill D. Moore: The increased complexity in our work, and the faster pace we have discussed, affect our clients as well. They face increased complexity in what's regulating them and a faster pace of happenings to which they have to respond. So one of the things I'm thinking about when I'm deciding what to write and when I'm going to find the time to write it, is what do they need to read and when are they going to find time to read it? More and more of my writing is in the form of outlines, or questions and answers. I think these "skimmable" formats are more likely to be useful to them.

Brown-Graham: I agree. For each publication I've done, I've put together an ad hoc group of clients to help advise me on what they need to know and how I need to present it in a way that's easily accessible to them.

Maureen M. Berner: The question of how much time we spend writing for academic journals versus how much time we work on projects with local government officials is a very odd question. It should not be considered a separation, or division, of time and effort. If you view it as serving two different masters, two different audiences, you'll never satisfy either one. You have to come up with an approach that integrates those activities and goals. For me it's taken years, but I feel much more comfortable now than I did five or six years ago.

Future Needs and Challenges

Whisnant: What do you anticipate will be the big needs and challenges for North Carolina government officials?

Vogt: Public law, government leadership, and public service have been at the core of this institution since its inception and continue to be uppermost in the minds of us who work here today. We've got to keep our eyes on this set of values. As the state grows, as it becomes more diverse demographically, politically, and so forth, it's important for us to continue trying to contribute to the effectiveness of government.

Farb: I think in the next 10–20 years, we need to deliver information in a way that someone can get it at their computer, at their desk or at home, if they want to. Live teaching will always be important, but people's lives are busier and will become more complex, and we have to give them the opportunity to take a course by sitting at their computer. I may be dead wrong, but I don't see them having a choice of coming to a live conference. Many of them are going to have to get it where they are.

Denning: Another specific challenge for the future, given the growth of the School, is figuring out the best way for us all to complement one another in what we're doing.

Brown-Graham: For me the challenge in continually assessing the relevance and value of my work lies in my ability to see my work in a broader environmental context—the environmental context in which our clients operate. That requires us to continually ask them about their environment.

It's also a changed environmental context in terms of other service providers who are doing things similar to what the Institute is doing. Over the next ten years, we'll have to spend a lot more time figuring out who our potential collaborators are and who our potential competitors are. And we'll have to make sure that our work is filling a unique niche for our clients, and be willing to work with others who can provide some other services.

Lawrence: When you get to be my age or Jack's or Bob's, it's more fun to reminisce about the past than to think about the future. One of the things I've seen in almost forty years at the Institute is the amazing growth of North Carolina. There are a lot more people in North Carolina than there were forty years ago, and there are a lot more government officials. For that reason alone, it's gotten much more difficult for us to reach all of our clients through regular classes. So I think that Bob is absolutely right: over time we're going to have to develop new ways to educate people, whether it's through the Internet or through other kinds of distance learning.

Notes

1. The term may have originated with Albert Coates, who "encouraged faculty members to go out and 'crawl through the bloodstream'—by which he meant visit government offices, talk with officials about their concerns, learn their practices and customs, and understand deeply their day-to-day work." "Teaching North Carolina Government," *Popular Government*, Fall 2006, p. 48.

Farb Retires

After thirty-one years of exceptional service on the School of Government faculty, Robert L. Farb entered phased retirement in July. Although he has relinquished his teaching duties, for the next three years he will continue to serve his clients with on-call advising and written summaries of new appellate cases and newly enacted legislation in his field.

Robert L. Farb

In announcing Farb's retirement, School of Government Dean Michael R. Smith said, "Bob has worked most closely with North Carolina's district attorneys, but many others involved in the criminal justice system also have relied on his advice—police legal advisers, judges, magistrates, and anyone else who has wanted the definitive word on criminal law and procedure."

"Bob not only has an encyclopedic knowledge of every court decision," Smith continued, "but he also has summarized each one in writing. Bob has been one of our best and most productive writers. I honestly have no idea how he does it, especially in light of the volume of phone calls and e-mails coming into his office. He is a terrific teacher, and he has been one of our most innovative colleagues in using technology to get information to public officials. On behalf of all his colleagues at the School, I congratulate and thank Bob for his many impressive contributions."

John Sanders, former director of the Institute of Government, added, "Bob Farb's thirty-one years of steady, productive, and highly valued service to the district attorneys, judges, and other criminal justice officials represents the professional performance of the Institute and now the School of Government at its best. Future clients and colleagues of the organization will continue to benefit from the substance and model of Bob's good work."

Peg Dorer, director of the North Carolina Conference of District Attorneys, joined Smith and Sanders in congratulating Farb on his extraordinary career. "Almost any district attorney in the state would consider Bob an essential, if not the most essential, part of his or her practice. Citing Bob Farb in court is as good as citing any statute or legal reference. The conference hugely appreciates his complete dedication to prosecution, and he will be sorely missed."

Farb began work at the Institute in 1976, focusing on state government and criminal law and procedure. Over the years, he quietly and steadily expanded his field of work, earning the respect and the confidence of clients in criminal justice and law enforcement statewide. The active and informative criminal justice listserv created and managed by Farb now includes 2,083 members.

His publications include books and articles on North Carolina crimes, arrest warrant and indictment forms, and various specialized topics involving criminal law and procedure. His works on capital case law and the law of arrest, search, and investigation are especially noteworthy. Many regard them as the most significant North Carolina references on those topics.

Throughout his career, Farb has conducted educational programs for North Carolina prosecutors and also has taught judges, magistrates, law enforcement officers, wildlife officers, and others who work in the criminal justice system. Further, he has served as an editor of the Legislative Reporting Service and the Administration of Justice memoranda.

Farb received an AB with honors in political science from UNC at Chapel Hill and a law degree from Harvard University. Before joining the Institute faculty, he served as an assistant district attorney for the Fourteenth Prosecutorial District, in Durham.

Nicolet Joins School as Associate Dean for Information Technology

In May 2007, Todd A. Nicolet joined the School of Government as its new associate dean for information technology. In this position, he will provide leadership and strategic planning for information technology implementation and support. Information technology covers an array of areas, including technology services for classrooms, distance education, videoconferencing, website development, desktop support, and network administration.

Todd A. Nicolet

"The School is well positioned to take advantage of recent technology developments and increase the breadth and impact of service across the state," Nicolet said. "I am excited about the opportunity to guide and support efforts to enhance and expand programs with technology."

Nicolet most recently served as associate director for operations for instructional and information systems at UNC at Chapel Hill's School of Public Health, where he managed all centralized tech-

nology services. While at the School of Public Health, he coordinated the *CDC Responds* webcast series in collaboration with the Centers for Disease Control and Prevention (CDC), forming a partnership across five schools at UNC at Chapel Hill to provide webconferencing solutions. He also managed development and support of the N.C. Public Health Workforce Preparedness System as part of an effort with the N.C. Institute for Public Health. In 2003 he was named the school's manager of the year in instructional and information systems.

Before his work at the School of Public Health, Nicolet was a site architect and a senior program manager with Eduprise, where he managed the delivery of online instruction development and support services for higher education institutions across the country.

Nicolet holds a BA in literature from Eckerd College (St. Petersburg, Florida) and an MA in English from UNC at Chapel Hill. He is currently pursuing a PhD in higher education administration at UNC–Greensboro.

School of Government Foundation Welcomes New Board Members

The School of Government Foundation recently elected Bobby J. Crumley, Charles B. Neely Jr., and Maurice R. Smith to membership on its board of directors.

Crumley, of Asheboro, is founder and chief executive officer of Crumley & Associates, PC, a consumer-based law firm with offices in central and western North Carolina, handling civil cases such as automobile accidents, workers' com-

pensation, Social Security disability, and nursing home neglect and abuse. From 1982 to 1984, Crumley served as Randolph County's manager and attorney. A member of the executive committees of Leadership North Carolina and the North Carolina Republican Party, he is currently a candidate for N.C. Attorney General. He holds a bachelor's degree from Appalachian State University and a JD from Wake Forest University School of Law.

Neely is an attorney with Williams Mullen Maupin Taylor, in Raleigh, where he was managing partner for ten years. His expertise is in government affairs, litigation, real estate, and tax law. Neely served three terms in the North Carolina General Assembly and was chair of the House Judiciary Committee. He currently serves as president of the Board of Directors of the Triangle Land Conservancy and is a member of the Blue Ribbon Committee on the Future of Wake County. He earned his bachelor's degree from the University of North Carolina at Chapel Hill and his JD from Duke University Law School.

Smith is president of the Local Government Federal Credit Union, in Raleigh. He joined the credit union in 1992 as executive vice-president and was named president in 1999. Earlier, he was vice-president of marketing at the State Employees Credit Union. Smith is a member of several boards of directors, including the North Carolina League of Municipalities Local Leadership Foundation. He holds a bachelor's degree from the University of North Carolina at Wilmington and a JD from North Carolina Central University's School of Law.

The board consists of up to twenty-seven members, who guide the annual

operations of the foundation. The foundation was established in 1996 to strengthen the private support necessary to conduct the School's statewide programs, projects, and operations. In addition to receiving annual city and county membership dues (which it collects and holds for the support of the School), the foundation accepts gifts of cash, securities, real estate, equipment, and other items from individuals, businesses, foundations, and associations in North Carolina.

Houston Assists New University Commission

Norma (Mills) Houston

Faculty member Norma (Mills) Houston is on a temporary leave of absence from the School to serve as executive director of University of North Carolina Tomorrow, an eighteen-month initiative launched in February by the UNC Board of Governors.

The commission is charged with learning what the people of North Carolina need from their sixteen-campus University over the next twenty years and making related recommendations to the Board of Governors.

Members include business, education, government, and nonprofit leaders from across the state. Representatives of the State Board of Education, the State Board of Community Colleges, and the North Carolina Association of Independent Colleges and Universities are participating *ex officio*.

Commission members and staff are traveling the state, visiting UNC campuses,

Bobby J. Crumley   *Charles B. Neely Jr.*   *Maurice R. Smith*

and meeting with regional leaders in different sectors and industries to discuss evolving challenges facing North Carolina. They will advise the Board of Governors as it develops potential responses to those challenges.

For the names of the commission members, visit the commission's website, at www.nctomorrow.org/.

Institute Receives Public Health Partners Award

On behalf of the Institute of Government, Michael R. Smith, dean of the School of Government, and Jill Moore and Aimee Wall, faculty members, proudly accepted the 2006 Public Health Partners Award from the North Carolina Association of Local Health Directors at the yearly State Health Director's meeting in January.

The annual award recognizes organizations, businesses, and professional associations that have made significant contributions to the advancement and the promotion of public health in North Carolina.

Colleen Bridger of the Gaston County Health Department made the nomination, citing the Institute's "long history of partnering with public health. From their amazing annual Health Directors' Legal Conference to their always consistent, timely, and accurate guidance and opinions on legal issues, they have been a partner without equal."

Over the years, the Institute's programs on public health law have been shaped by the expertise of many faculty members, from William Cochrane, Roddy Ligon, Anne Dellinger, and Milton Heath, to Moore and Wall today.

The award citation saluted the current efforts of Moore and Wall, saying,

Both have traveled the state providing hands-on technical assistance, and in spite of this grueling travel schedule, rarely does an e-mail or voicemail message go unanswered for more than a few hours. It is not unusual for Jill or Aimee to have crafted a clarifying document in response to an emerging health issue before most of us have even understood the issue well enough

From left to right, Aimee Wall, Michael Smith, and Jill Moore

to have questions. And in spite of the onslaught of emerging health issues and their legal ramifications in the last five years, you can always count on both of them to continue to offer timely, up-to-date information on the more routine public health issues such as minor's consent, smoking, employee cellphone use while driving, HIPAA, animal control, BOH bylaws, isolation and quarantine, and services to nonresidents. They always provide

well-researched information in writing, all the while volunteering to do more, whether it be speaking to a Board member, a county attorney, or a county manager.

In sum, local public health in North Carolina has a tremendous partner in the Institute of Government. It isn't often that an entity staffed entirely with attorneys is thought of with such admiration, gratitude, and respect, but the Institute is a rare exception.

Bland Simpson Gives Coates Lecture

At the School of Government on April 19, 2007, UNC at Chapel Hill Professor Bland Simpson delivered the fourth annual Gladys Coates University History Lecture. Simpson's lecture, entitled "Keeping Time: Two Centuries (and Counting) of Tar Heel Tunes and Songs from the Southern Part of Heaven," was accompanied by several original songs from "Tar Heel Voices," his 1994 commemoration of UNC's bicentennial, co-produced with Jack Herrick of Chapel Hill. The Coates Lecture is sponsored annually by UNC at Chapel Hill Friends of the Library. It was established in 2004 with a bequest from Mrs. Coates, wife of the founder of the Institute of Government (now the School), to promote greater knowledge and appreciation of the history of the nation's first publicly supported institution of higher education.

Behind the Scenes at the School of Government

Michael Zirkle

Program Management

Some of the most familiar faces to those who visit the School are the program managers: left to right, Lisa Sheffield, Dan Chegash (director of Facilities amd Instructional Support), Angelo Bowden, Stacey Everett, JoAnn Brewer, Cynthia Lee, Monica Glover (center front), Brian Newport (center back), Linda McVey, Scarlett Jordan, Audrey Williams, Janice Smith, Callie Barber, Beverly Howarth, and Jeanna Wood. Not pictured, Carolyn Boggs. They handle the myriad logistics for all courses, seminars, and conferences, working with the faculty on everything from advertising to evaluation.

Legislative Reporting Service

Ann Simpson

For more than seventy years, the Institute of Government's Legislative Reporting Service (LRS) has informed local governments, state agencies, and North Carolina citizens about the status and the content of North Carolina legislation. The centerpiece of the LRS is the *Daily Bulletin,* distributed to subscribers electronically at the end of each day that the General Assembly is in session. The *Daily Bulletin* summarizes every bill introduced and every amendment, committee substitute, and conference report adopted. It also records the daily action taken on the floor of the House and the Senate with respect to each bill. The expert staff of the LRS consists of, from left to right, Sheria Reid, staff attorney; Christine Wunsche, staff attorney; Penny Griffin, administrative assistant; Martha H. Harris, editor; Judy McConnell, administrative assistant; and Jennifer Henderson, office manager and legal assistant.

Development and Communications

Michael Zirkle

The dynamic team for development and communications raises funds to keep the School's programs and services on the cutting edge and affordable, and it gets the news out with press releases, newsletters, and Web pages. The development and communications team is, left to right, Becky Carter, administrative manager; Jean Coble, external relations coordinator of the Master of Public Administration Program; Faith Thompson, assistant dean for development; Ellen Bradley, director of communications; and Ann Simpson, associate dean for development and communications.

The Master of Public Administration Program: Celebrating Forty Years of Educating Public Service Leaders

In fall 1966, strong leadership from John Sanders, director of the Institute of Government, Fred Cleaveland, chair of the Department of Political Science, and Donald Hayman, professor of public law and government, resulted in UNC at Chapel Hill's founding the Master of Public Administration (MPA) Program, a graduate professional program to train students for management careers in public service. The new program was offered by the Department of Political Science in collaboration with the Institute of Government. Through this effort, the University sought to fulfill its responsibility as a public institution to help meet the rapidly growing demand for competent and professionally trained public administrators at all levels of government.

Many businesses and organizations provided student scholarships for the new program, including the R. J. Reynolds Tobacco Company, the Wachovia Bank and Trust Company, the Burlington Foundation, the P. H. Hanes Foundation,

Carl Stenberg

The Program's "Godfather"

Donald Hayman, one of several faculty members revered by MPA Program alumni, often is affectionately described as the program's "godfather." He worked tirelessly behind the scenes to help create it. At the 2004 Conference on Public Administration, Hayman participated in a session called Carolina MPA History: Milestones and Trivia, during which he offered this informal recollection of his role in designing the program:

> Dr. Howard Odum, the chair of the UNC Sociology Department in 1933, prepared a request for a grant from the Carnegie Corporation to establish a Master of Public Administration Program in the Sociology Department. The day that UNC President Frank Graham was to submit the grant application, President Roosevelt declared a bank holiday. President Graham returned to Chapel Hill without submitting the request to the Carnegie Foundation. We waited for thirty years.

> In January 1948, Terry Sanford, who was directing the IOG's Highway Patrol Training Schools, informed Mr. [Albert] Coates [founder of the Institute] he was resigning to run for the State Senate. Mr. Coates, whom I had never met, invited me to serve at the IOG for two years. I retired thirty-nine years later.

> On September 1, 1963, I began a nine-month leave of absence to accept an invitation from my undergraduate major professor to direct the University of Kansas MPA Program while he was on sabbatical leave. The KU program became the model for UNC's MPA Program.

Donald Hayman

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the North Carolina City and County Management Association, the U.S. Department of Housing and Urban Development, the U.S. Office of Economic Opportunity, the Ford Foundation, and the National Association of Schools of Public Affairs and Administration. These supporters recognized the value and the strategic importance of increasing professionalism in state and local government in North Carolina and throughout the nation.

Hayman was the architect of the program (see the sidebar on this page). Although he never officially directed it, his leadership was strongly felt. Robert Daland launched the program and served as its director from 1966 to 1968. He was followed by Kenneth Howard, 1968–73; Deil Wright, 1973–80; Gordon Whitaker, 1980–92; Michael Munger, 1992–95; Stephen Allred, 1995–2001; David Ammons, 2001–6; and Carl Stenberg, 2006–present. Under the expert leadership of these directors and a dedicated faculty, the program has flourished (see the sidebar on page 56).

In 1997, Chancellor Michael Hooker moved administration of the MPA Program to the Institute. The move brought the program to a part of UNC at Chapel Hill that is directly aligned with the MPA Program's mission of
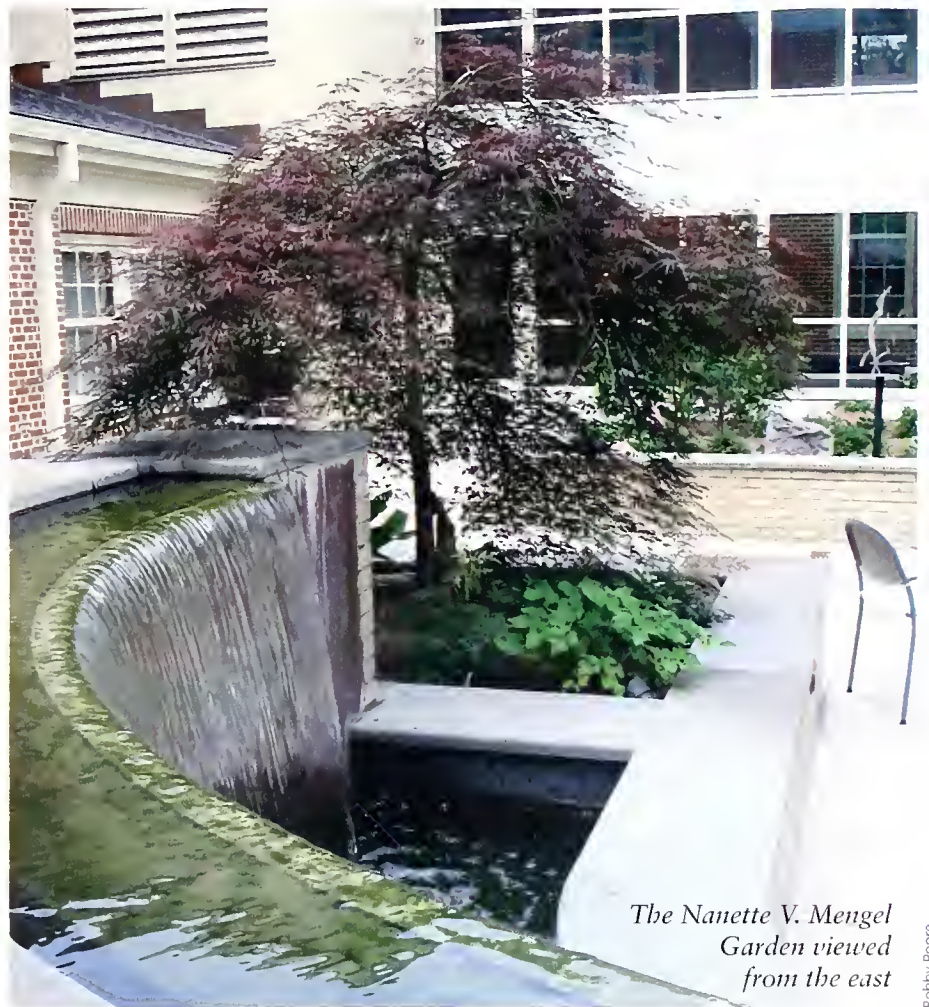
The Nanette V. Mengel Garden viewed from the east

Robby Poore

preparing students for leadership careers in public service.

Over the last ten years, the program has grown significantly in enrollment, faculty resources, financial resources, and facilities. In the 2005 edition of "America's Best Graduate Schools," published by *U.S. News & World Report*, it was ranked sixth nationally for city management and tenth overall. Its faculty members are known nationally for their outstanding accomplishments in research and publishing in public administration.

Alumni of the program serve with distinction in government and nonprofit agencies throughout the United States and abroad. However, the program's historic focus on local government in North Carolina remains strong and important.

Alumni have been critical to the educational success of the program's students, contributing immense tangible support in many ways. For example, they were instrumental in building the School's Nanette V. Mengel Garden to honor a highly regarded MPA Program faculty member, and many offices in the MPA Program section of the Knapp-Sanders Building bear plaques recognizing the contributions of alumni and faculty.

Support for students, always critical to the program's success, is growing as a result of alumni's accepting the challenge of raising $1 million in new scholarship funds by 2015. In 2005, Sharon and Doug Rothwell (both in the class of 1980) established the Rothwell Scholarship, currently the program's largest student award. In 2006 the Diversity in Public Administration Scholarship was launched. These awards, along with twelve other named scholarship funds, are instrumental in attracting some of the best students in the nation.

On May 13, 2007, the MPA Program graduated its fortieth class. Its members join nearly 1,000 other alumni who are

Former MPA Program faculty member Donald Hayman (left) and wife, Mary Helen (right), with alumni Doug and Sharon Rothwell

On May 13, 2007, the School of Government's Master of Public Administration Program proudly graduated twenty-nine students from its two-year curriculum. The students will pursue careers ranging from work in local governments and nonprofits to service in federal agencies in Washington, D.C. Congratulations, graduates!

making a difference in North Carolina and across the country. We congratulate these students on their accomplishment and celebrate with the MPA Program its four decades of educating public service leaders.

—*Jean Coble, external relations coordinator for the MPA Program*

Professor Molly Broad, former president of the University of North Carolina system and now a faculty member at the School of Government, delivered an inspiring commencement address to the MPA Program graduates, focusing on the value of public service.

The MPA Program Then and Now

	1966	2006
Number of students	7	56
Number of faculty members	4	21
Years of on-campus coursework required	1	2
In-state tuition for one year	$600	$4,563
Credits needed to graduate	36	54

Off the Press

### County and Municipal Government in North Carolina
2007 • Book or CD–ROM format, $95.00*
Edited by David M. Lawrence

A new way for the School to deliver information to its clients, this complete reference book on North Carolina county and municipal government describes the legal foundations, the organization, and the administration of the state's counties and cities. It updates and replaces two books, *County Government in North Carolina*, last published in 1998, and *Municipal Government in North Carolina*, last published in 1996. You may purchase downloadable PDF versions of individual articles, a complete loose-leaf print version, or the entire e-book on a CD–ROM.

Handbook for North Carolina County Commissioners
Third edition, 2007 • $20.00*
Joseph S. Ferrell
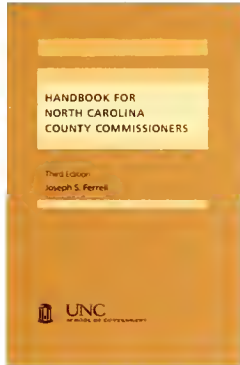
This new edition provides a brief discussion of the structure of county government in North Carolina and the commissioners' role within it. Candidates for county office will find the publication useful, as will students who are working on term papers and anyone who wants to learn more about what counties do and how county governing boards conduct their business.

Introduction to Zoning
Third edition • Forthcoming Summer 2007 • Contact the Publications Office for ordering information.
David W. Owens
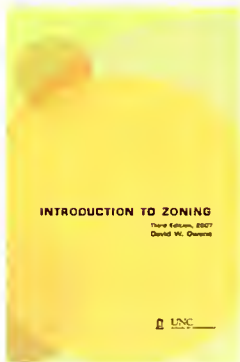
Now in its third edition, this essential reference provides a clear, understandable explanation of zoning law for citizen board members and the public. It serves as both an introduction for citizens new to zoning issues and a refresher for those who have been involved with zoning for some time. Each chapter deals with a distinct aspect of zoning, such as where a city can apply its ordinance, what process must be followed in rezoning property, and how an ordinance is enforced.

Recent Publications

Special Use Permits in North Carolina Zoning
Special Series, No. 22, 2007 • $16.50*
David W. Owens

Local Government Budget and Fiscal Control Act
Sixth edition, 2006 • $11.00*
Compiled by David M. Lawrence and Kara A. Millonzi

North Carolina Legislation 2006: A Summary of Legislation in the 2006 General Assembly of Interest to North Carolina Public Officials
2007 • $50.00*
Edited by Martha H. Harris