

DOT Secretary Provides Slush Fund for Legislators



Photo courtesy of NCDOT

DOT Secretary Lyndo Tippet (above) diverted discretionary funds from safety projects

*Traffic safety, separation
of powers are key issues
for governor to consider*

By DON CARRINGTON

Executive Editor

RALEIGH

N.C. Department of Transportation Secretary Lyndo Tippet has diverted millions of dollars that could have been used for documented highway safety needs to projects selected by legislative leaders.

According to state law, the DOT secretary is to approve all projects financed from a \$15 million annual "contingency fund," but DOT records and interviews show that for the past few years Tippet gave \$5 million a year

each to the speaker of the House and president pro tem of the Senate to spend on projects they chose. Rep. Jim Black, D-Mecklenburg, and Sen. Marc Basnight, D-Dare, hold those offices.

A *Carolina Journal* review of DOT spending raises two important questions. Why would Tippet fund non-safety projects before documented safety related projects? Perhaps more important, why would Gov. Mike Easley allow Tippet to maintain \$5 million "checking accounts" for Black and Basnight?

Despite repeated requests by *CJ*, Tippet and Easley refused to answer questions or provide documents authorizing the discretionary funds controlled by Black and Basnight.

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Experts Warn There May Be Bubbles in U.S. Housing Market

Cities that practice
'growth management'
risk an economic collapse

By RANDAL O'TOOLE

The Thoreau Institute

Bandon, Ore.

Real estate analysts are hotly debating whether the U.S. housing market is in a bubble. A bubble would mean people are paying unrealistically high prices and a fall in those prices could devastate our

economy.

At one extreme is John Talbott, an investment banker whose 2004 book, *The Coming Crash in the Housing Market*, predicts that nationwide prices will fall by 20 percent or more. At the other extreme are investors such as Ed Wachenheim, who argues that housing is different from other markets and so won't suffer a huge decline in value. In the middle are numerous analysts who think that there is no national bubble but that prices may fall in "some communities".

Home prices are too high, says one analyst, in only about 20 urban areas,

mostly located in eight states. "The bad news is that those areas contain roughly half the housing wealth of the country."

The regions that are most frequently mentioned as having overpriced housing markets — such as San Jose and Boston — are the ones that practice the strongest forms of "smart growth" or other growth management. These artificial constraints prevent builders from supplying the demand for housing, leading to rapid price increases and an expectation on the part of home buyers that such increases will continue.

Bubbles arise when prices are based more on speculation that such prices

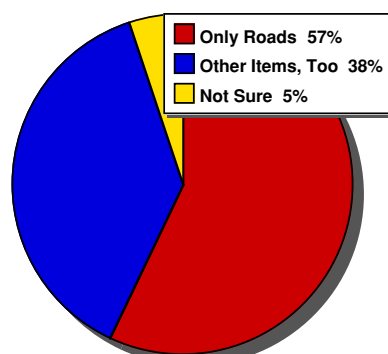
will go up than on the intrinsic value of goods.

If speculators think that prices will continue to rise in the future, they will be willing to pay more for something today than it is worth based on today's values.

In a normal market, for example, the monthly mortgage on a home should not be much more than the cost of renting a similar home. But in many housing markets today, rents won't cover mortgages; in such cases, the *Economist*

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NC Should Spend Gas, Car Taxes On...



% of N.C. Respondents in Oct. 2004 JLF Poll

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Safety

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DOT has 173 Spot Safety Program projects, estimated to cost a total of \$20 million, waiting for funding. The current budget for Spot Safety is \$9.1 million. Expenditures from this fund are for traffic signals, turn lanes, guardrails, regrading, and other activities to enhance safety. Requests for projects come from DOT engineers, highway patrolmen, private citizens, and local-government officials. Accident and injury data are gathered to prioritize projects.

For the current year the General Assembly appropriated a separate \$15 million for contingency funds to be used statewide for "rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety."

The legislation also states that the secretary of transportation shall approve the projects. While Tippet and the DOT Board formally approve the legislator's projects, the approval process appears to be automatic. Contingency fund expenditures do not receive the thorough analysis by DOT engineers that Spot Safety projects receive. Contingency funds are sometimes used to pay for projects on the Spot Safety list, but many contingency fund expenditures appear to have little or nothing to do with safety.

In July 2004, Tippet approved \$200,000 from the speaker's \$5 million account to restore a terminal building at Wilmington Airport for a welcome center. In March 2005 he approved another \$50,000 from the speaker's account for the same project. In July 2004, he approved \$150,000 from the Senate president pro tem's account to purchase and renovate a Tabor City service station for a welcome center.

In January 2004, Tippet approved \$130,000 each from the speaker's account and the Senate leader's account each for upgrades at the Anson County Airport. In May 2004 he spent \$267,000 from his own \$5 million account to resurface the pavement at the Elizabethtown Airport. A file notation indicates that Sen. Tony Rand, D-Cumberland, requested the project.

These and other projects are summarized on a DOT report "contingency funds report by source and request 04/05." As of March 1, 116 projects had been approved and charged to the fund. The report lists the location of the project, a brief description, and the date of DOT Board approval. Column headings include the secretary, the speaker, or the president pro tem, with the project cost entered in the appropriate column. A

"Grand Total" line showed that Tippet had spent \$3,054,935; the speaker \$4,088,985; and Basnight had spent \$1,740,219 this fiscal year.

The process

"Speaker Black has approved Bill Owens request of \$250,000 for the Main Street (project) in Elizabeth City. Please find the enclosed letter for details. This is half of the \$500,000 needed for this project and Speaker Black would like to share the cost with Senator Basnight," read a memo from Black's office to Tippet. The DOT Board approved each request and several others at the board meeting Feb. 3, 2005.

Legislative control of discretionary funds "clearly raised a serious constitutional question about the separation of powers."

A story in *The Daily Advance* of Elizabeth City gave more details on the project. DOT Division 1 Engineer Anthony Roper told city officials that the city is eligible to receive \$250,000 now and will be eligible to receive the remaining \$250,000 in July. Roper's comments imply that someone has the influence and ability to deliver discretionary money, even from a new budget that has yet to be debated. That someone is Basnight, who according to the paper, "has vowed to support the city's latest request" for \$500,000.

"Streetscape and beautification project along Main Street (a non-system street) in the Town of Elizabeth City..." reads the project description on a DOT form "Request for Statewide Contingency Funds." The form even has a pre-printed space to check if the request is from the Senate president pro tem or the speaker of the House. Another line on the form reads "Investigated by Chief Engineer's Office Yes/No." On that request, "No" was underlined.

The form has "Recommended by" lines for signatures by the chief engineer. In this case Chief Engineer W. S. Varnedoe crossed out "Recommended by" and wrote, "Reviewed by." Other signed approvals included DOT Deputy Secretary Daniel Devane and Secretary Lyndo Tippet.

A history to the process

The process has been going on for several years. In April 2000, while Garland Garrett was DOT secretary, Sen. Fountain Odom sent a letter to Basnight about a Charlotte project. "I request \$100,000 in discretionary funds to help fund the paving of ramps to the Johnston Road Interchange in Charlotte to connect Johnston Road to the Outer Loop. It is my understanding that House Speaker Jim Black has committed \$100,000," Odom wrote.

In July 2004 the DOT Board approved two contingency fund projects in Columbus County. State Sen. R. C. Soles, D-Columbus, had requested \$150,000 to purchase and renovate a service station to provide a welcome center in Tabor City. Basnight approved the request and the money was essentially charged to Basnight's account. At the same board meeting \$210,000 was approved to grade and pave a rural dead-end road in Columbus County. The request came from Rep. Dewy Hill, D-Columbus, was approved by Black, and deducted from Black's \$5 million account.

In a quandary

When asked how the speaker obtained a discretionary fund, Hill told CJ, "I wish I could tell you. I don't know. I have no idea how the system works." He said he recently became aware that the contingency funds could also be used for Spot Safety projects.

One such Spot Safety project in Columbus County that remains unfunded is the resurfacing and regrading of Slippery Log Road. That project is estimated to cost \$250,000. DOT information on the proposed project states that in the past three years there were 18 total accidents, 11 of which were considered correctable by the proposed improvements. The accidents produced three fatalities and 13 injuries.

When asked why contingency funds were not applied to that project first Hill said, "That's a good question. That's a terrible highway." He said he recently requested \$7,000 from Black for the paving of a Columbus County fire department parking lot.

DOT traffic safety systems engineer Kevin Lacy oversees the \$9.1 million-per-year Spot Safety Program, but not the contingency fund. "If we had more

funds we would program more projects," he said when asked about the backlog. He said the contingency fund has often helped pay for projects waiting for Spot Safety Funds. As for the use of contingency funds for nonsafety projects, he said that "there are

many needs for transportation improvements."

The N.C. Constitution states that the executive power of the state shall be vested in the governor and the governor shall administer the budget enacted by the General Assembly. The Constitution contains no provisions for legislators to direct the spending of funds that have been appropriated.

CJ contacted Black's and Basnight's office asking for the documents authorizing the discretionary accounts. Both offices acknowledged receiving the re

"I wish I could tell you. I don't know. I have no idea how the system works."

**— Rep. Dewy Hill
D-Columbus**

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Bubbles in Housing Market Reflect Attempts to Manage Growth

Continued From Page 1

magazine suggests that people should rent rather than buy. But if people think that prices are rapidly rising, they will pay the mortgage premium figuring that they will make up for the extra costs of buying when they sell the house.

Like dot-coms?

This is what happened to dot-com stocks in the 1990s. Claims that there is little risk of falling prices because housing is "different" from other assets sounds ominously similar to assurances given before the dot-com bubble burst. Supposedly, housing is special because people own their homes for many years, so any declines in value will be small.

Ironically, disillusionment with the stock market has contributed to the housing bubble as people put their money in real estate rather than other assets. A recent report by the National Association of Realtors found that more than a third of the homes sold last year were purchased by investors or for second homes, not for primary residences. This "astonished" the Realtor Association's chief economist as it suggests that speculation is much more significant than previously thought.

Another sign that buying is speculative is the fact that nearly a third of mortgages today have adjustable interest rates. Buyers ought to prefer fixed rates when rates are low and likely to rise — unless they expect to sell soon. So much for housing being different because people will hold on to homes for many years.

Slush Funds Kept by Legislators

Continued From Page 2

quests, but neither has responded.

Former N.C. Supreme Court Justice Robert Orr heads the N.C. Institute of Constitutional Law. Orr said legislative control of discretionary funds "clearly raised a serious constitutional question about the separation of powers."

Sen. Phil Berger, R-Rockingham County, is the Republican Senate leader and a member of the Transportation Appropriations Committee. He recently became aware of the distribution process for the contingency fund.

"The information I have recently received raises concerns as to whether the practice of discretionary funds is consistent with our Constitution. I am requesting an opinion on the issue from Attorney General Roy Cooper," he said.

The News & Observer of Raleigh revealed recently that legislative leaders also secretly set aside \$20 million from the General Fund for distribution at their discretion this fiscal year.

The funds were listed as reserves for grants and allocated to various state

Most of the riskiest housing markets are in California or Massachusetts. These regions are famous for their growth-management planning.

Other risky housing markets on PMI's list include the Twin Cities of Minnesota, Denver, and, of course, Portland, Ore.

Among PMI's least risky regions (less than a 10-percent chance that prices will fall) are Las Vegas, San Antonio, Memphis, and Oklahoma City. These are all reasonably fast-growing regions that practice little, if any, growth management. While the correlation between growth management and risk is not perfect, it is very high.

"Buyers are not price-sensitive because they are leveraged and playing with other people's money," says John Talbott. The zero-down-payment loans now being offered by mortgage companies promote even more speculation. Nor do banks "care about prices paid because they don't hold the mortgages they create," Talbott adds, since they generally sell them "upstream" to other mortgage companies.

Of course, these things are true everywhere. What makes places such as San Jose special are the constraints on home builders imposed by urban-growth boundaries and other land-use regulations.

Coldwell Banker's numbers suggest that seven of the nation's 10 most expensive housing markets are in California cities that have urban-growth boundaries or other forms of growth management planning.

Five of the 10 most expensive markets on the National Association of Re-

departments.

The money, like \$10 million of the DOT contingency fund, could not be spent by the department head. It could only be spent after being instructed by Basnight, Black, or former Cospeaker Richard Morgan, R-Moore County.

In early 1997 *CJ* and other news organizations exposed a \$21 million discretionary fund that legislators had set up in the Office of State Budget and Management. Basnight and then House Speaker Harold Brubaker each controlled 45 percent of the money, Gov. Jim Hunt was allowed the remaining 10 percent for distribution of the checks.

When questioned about the practice in February 1997, Basnight told *The N&O*, "You've got me thinking. Somehow or other, you've got to help these areas in the state that need the money. But it shouldn't be left in my hands to decide or Brubaker's hands to decide."

Basnight kept it up, though. "This is to authorize \$75,000 from my discretionary funds to Senator Roy Cooper," read a July 1997 letter from Basnight to then DOT Secretary Garland Garrett. *cj*

altors' list are in California. Both lists place the highest housing prices on the coasts, with housing in the Midwest and South remaining very affordable. Other expensive housing markets on both lists are in Boston, Denver, and Seattle — all cities that practice various forms of growth management. Coldwell-Banker's list also includes Canadian cities, and the most expensive is Vancouver, that nation's smart-growth leader.

By causing rapid increases in home prices, growth management contributes to housing bubbles because people who might otherwise invest their incomes in stocks, bonds, or money-market accounts will be tempted to put more of their incomes in real estate instead. Thus,

In May, 2003, the *Economist* predicted that the housing bubble would burst "in the next year or so." While that didn't happen, one web site warns that median Bay Area sales prices have declined more than 15 percent in last three. While this might merely be seasonal, some real estate stocks lost 15 percent of their market value in February, suggesting that Wall Street is beginning to worry about falling prices.

"A housing bubble doesn't burst, but only deflates," said UCLA econo-

mist Edward Leamer. Far from being reassuring, Leamer said this can mean a "long agonizing decline in prices."

The worst case is a Tokyo-like crash that would force large numbers of people to default on their loans, which in turn could jeopardize the health of the nation's mortgage insurance programs, Fannie Mae and Freddie Mac.

With the nation's housing stock worth trillions of dollars, a taxpayer rescue could conceivably cost far more than the savings-and-loan bailout of the 1980s.

Housing in many Massachusetts and California markets seems far too expensive for a soft landing. Such housing markets, Leamer said, are more likely to experience declines similar to (or worse than) those in the early 1990s.

One can't predict the future, but one suspects Bay Area, Boston, and other California and Northeast markets will suffer a severe correction in the next few years. Provided the contraction in those markets doesn't have huge economic impacts elsewhere, most other regions can hope for a soft landing. Still, this should provide a caution to planners who think they can "manage growth" without potentially severe impacts on housing and other markets. *cj*

The Locker Room

The John Locke Foundation Blog

Just Go Right In...

To the Best Site For No-Holds-Barred Commentary

"The Locker Room" is a daily blog of insights, news links, debates, crosstalk — and more than a few jokes — from the staff, fellows, and scholars of the John Locke Foundation.

Here's some of what you missed if you weren't among the many thousands of North Carolinians who took a visit to "The Locker Room" last month to see what was going on:

- Quotes from old Cary Grant movies.
- N.C. State students calling their prof a "hardcore hippy."
- Lessons about taxes from the ancient Sumerians.
- Boxing gloves and body armor for cockfighting.
- Martin Luther, Blogger Extraordinaire.
- Sport-utility vehicles and Oscar the Grouch.
- Global warming causes global cooling, "scientists" say.
- An town that may ban leaf blowers (hint: it's got a college).
- President Bush's call for global freedom — and a dissent.

Now You Have the Key to Locke:
www.JohnLocke.org/LockerRoom

Capitol Briefs

• Just in time for its 15th anniversary celebration, the John Locke Foundation began a major expansion of its flagship publication, *Carolina Journal* — including new local editions in Greensboro, Charlotte, and Asheville and a new officer to run its *Carolina Journal* division.

The Raleigh-based think tank recently hired Jon Ham to serve as vice president and publisher of *Carolina Journal*. Ham formerly served as the managing editor at the *Durham Herald-Sun* and as its director of digital publishing.

As vice president of JLF's *Carolina Journal* division, Ham will oversee not only the print publication but also *Carolina Journal Online*, a popular daily web site devoted to North Carolina politics and public policy, and "*Carolina Journal Radio*," a weekly hourlong newsmagazine broadcast on 20 commercial radio stations in the state, including affiliates in Winston-Salem, Fayetteville, Asheville, Wilmington, and Chapel Hill.

One of Ham's main tasks will be to manage the expansion of *Carolina Journal*. Published since 1991 as a monthly journal of news, analysis, and commentary, *Carolina Journal* has about 25,000 readers statewide. Starting in April, special local editions of *CJ* will appear monthly as sections of *The Rhinoceros Times* in Greensboro, its companion paper *The Rhinoceros Times* of Charlotte, and *The Tribune* newspapers in Asheville and Hendersonville.

"We are delighted to deliver *Carolina Journal*'s unique brand of news and commentary to 160,000 readers each month," said John Hood, president of the Locke Foundation. "And we couldn't be more fortunate than to have an the experience of Jon Ham at the helm during this important expansion of JLF's *Carolina Journal* division."

Ham will join a *CJ* staff with many years of experience in journalism and public policy. Editor Richard Wagner formerly edited the *Kinston Free Press* and worked at other newspapers in North Carolina, Florida, Texas, and California. Executive Editor Don Carrington and Associate Editor Paul Chesser write many of *CJ*'s cover features and investigative stories.

Associate Editors Donna Martinez, cohost of the weekly TV show "At Issue" on the Triangle's NBC 17, and Michael Lowrey, an economist and longtime *CJ* contributor based in Charlotte, focus on local, regional, legal, and transportation issues. *CJ*

Some administration officials were unsure about enforcing provisions of deal

Memos Reveal Doubts on Dell Incentives

By RICHARD WAGNER

Editor

What's a "related entity"? What's a "strategic partner"? State officials didn't know exactly when drafting legislation that would grant \$242 million in "economic incentives" for Dell, Inc., to build a computer plant in North Carolina.

In emails released by the N.C. Commerce Department, crafters of the Dell legislation expressed concern over critical language that would allow Dell to set up other entities at the plant site. The emails said that fuzzy language included in drafts of the bill might allow the company to bypass its negotiated guarantees with the state — including the 1,200 full-time jobs supposed to be created by the legislation and \$100 million to be invested in the plant by Dell.

Commerce Department officials and bill drafters exchanged a flurry of emails concerning the details of the bill only one day before the Easley administration brought the measure to a special session of the General Assembly.

Related entities a concern

"North Carolina has struggled for years with companies using related entities as a tax avoidance mechanism," said an email sent by Martha Harris, a legislative bill drafter, to Don Hobart, lawyer for the Commerce Department. "Companies create related Delaware holding companies and use accounting tricks to eliminate their NC taxable income. Companies create complex chains of related companies to shift property into LLCs and avoid franchise tax."

"If we make this bill's language wide open, we are just leaving fertile ground for more creative ideas — not necessarily by Dell, but this law does not apply to just Dell. Staff can't predict and enumerate specific methods for exploiting the proposed broad language. That is the nature of loopholes. They are overlooked and then exploited later contrary to the legislature's intent."

"Because NC is a separate entity filing state, the [Department of Revenue] cannot view the entire web of inter-related entities to determine the real economic effect of their actions. Also, you are giving one entity a credit for activity undertaken by another, which is contrary to existing tax provisions in our law."

"Shifting income and expenses between and among various related entities is the essence of tax avoidance. Has the Department of Revenue been fully briefed on what is intended here with related entities? Do they have any concerns of questions?"

Then Harris expressed doubt that the package for Dell could deliver the economic benefits highly touted by Gov.



Site preparation for the new Dell assembly plant in Forsyth County began in January.

Mike Easley and other state officials.

"I could not recommend that the General Assembly give a broad carte blanche like this when we are lacking facts and details as to what is going to be done. If Dell can't or won't give us an idea of how many and what type of related entities will be making the investment and/or creating jobs, how can we know what they will do in exchange for the millions of dollars we are giving them?"

In his response to Canaan Huie of the Bill Drafting department, Hobart acknowledged he, too, pondered the inclusion of related entities: "Anticipating further discussions over including related entities in the job creation count for the computer credit...can you describe a fact pattern that gives you concern about including related members in the job count for eligibility?"

"If the issue is how many new jobs did the taxpayer cause to be created at the facility, and if we apply the safeguards to the related members just like we would to the taxpayer, why would it matter whether the taxpayer creates the jobs itself or through a related member?"

"We wanted to limit the ability of strategic partners to have their jobs counted because the company would have no true control over the strategic partners and we wanted to limit the number of their positions that would count to just those that directly contribute to manufacturing."

Apportionment factors

In one email Huie raised other questions for Hobart to consider.

"Here's the opportunity I see for tax avoidance using the related entities. I don't know that narrowing the scope will help much, but here's the scenario."

"Dell Products comes to NC with significant income. They use the related entity not only to construct the facility,

but to hold the property as well. Then, they use the related entity to meet many of the jobs requirements. They manipulate payments to the related entity so that it has very little income."

"When it comes time to apportion income, Dell Products has very few of its payroll or property in the State. Since Texas and Tennessee don't have income taxes, Dell may be the legal entity that holds the property and has the payroll in those states. This could vastly decrease those apportionment factors so that very little of the income is apportioned to this State and a majority of it is apportioned to the states without income tax."

Hobart answered Huie by saying that the Department of Revenue had reviewed the details of the proposed tax credit for Dell and found it to be OK.

The final definition of a "related entity" was offered in an email from Jim Fitzgerald of Dell to Hobart: "An entity that the taxpayer possesses directly or indirectly at least 80 percent of the control and value" of both entities.

That's how the definition stood in the bill approved by the legislature.

The final bill also included language for "relationship with related entities and strategic partners:

"A taxpayer must obtain the written consent of related entities and strategic partners to include jobs created by those entities in the taxpayer's increased employment level. If a taxpayer fails to obtain this written consent, the taxpayer may not include jobs created by the applicable business in its increased employment level. This consent, once granted, is irrevocable. A job may not be included in the increased employment level of more than one entity. The taxpayer is responsible for providing all information needed to verify eligibility for the credit, including information relating to the related entities or strategic partners of the taxpayer." *CJ*

Bill would place controls on annual growth in state budget

North Carolina Republicans Introduce Taxpayer Protection Act

By PAUL CHESSER

Associate Editor

RALEIGH

Republicans in the General Assembly last month introduced a Taxpayers' Protection Act, which would constitutionally place controls on lawmakers' spending and refund any excess revenues to taxpayers.

At the same time the bill's sponsors acknowledged the political reality of their minority status.

State Sen. Fred Smith of Clayton, who sponsored the legislation, presented the bill as a vehicle to open a "dialogue" on fiscal restraint with Democrats.

But he said that if leaders in both the House and Senate weren't willing to discuss ideas on how to rein in government spending, Republicans would take the idea "directly to the people."

"This issue is not going to go away," Smith said at a press conference at the Legislative Building.

Asked how his group would hold Democratic leadership accountable on the issue with North Carolinians, Smith replied "elections." Democrats have

held the governorship and had either shared or had total control of each chamber of the legislature since 1997. Smith vowed an improved performance by Republicans in 2006.

But in the meantime, the proposed act would seek to impose an annual state spending limit based on a previous year's expenditures, plus an increase that reflects the growth rate of inflation and population.

The bill would establish a reserve fund "for declared emergencies only," which would be maintained by excess revenues over the spending limit and kept at a level of 3 percent of the fiscal year's spending limit.



State Sen. Fred Smith, R-Johnston

It would also create a Budget Stabilization Fund for years when state revenues fall short of the fiscal year spending limit, which would be maintained at a level of 18 percent of the fiscal year spending limit.

"What's missing in government budgeting is discipline," said State Sen. Richard Stevens of Wake County, a cosponsor of the bill.

The Taxpayer Protection Act will let North Carolina have discipline in its spending while making sure that we take care of our needs in education, roads, and jobs."

Smith said the entire Senate Republican caucus, with 21 members, supported the bill, as did 51 members of the

House GOP.

"It's an idea whose time has come," he said.

Smith and other Republican lawmakers criticized Gov. Mike Easley, who earlier released his budget recommendations, for proposing \$1.7 billion in new taxes over the next two years. They said the governor's plan would increase spending by 6.1 percent.

Smith said that lawmakers need a mechanism in the law that would limit on how much they could increase expenditures each year.

"The good things that can be done [with state money] are unlimited," Smith said. "(The Taxpayer Protection Act) makes sure we can meet the needs of the state."

While Republicans disapproved Easley's plans, the libertarian Cato Institute in Washington D.C. gave him a "C" grade in its biennial Fiscal Policy Report Card on America's Governors. He received the passing mark even though Cato, which supports tax cuts, said he enacted the largest rate increase in the top income tax rate and also raised sales taxes.

CJ

Did NC Overpay for Dell Plant?

By PAUL CHESSER

Associate Editor

RALEIGH

The publisher of a magazine for economic development professionals says North Carolina gave Dell too much when the state offered \$242 million in tax breaks to build a plant in Forsyth County.

But at the same time, *Southern Business & Development* commended state leaders for opening the coffers for the Texas-based computer manufacturer.

"While we don't know exactly how the incentive package North Carolina offered Dell is set up, we do know exactly the history of large incentive packages given out to companies that have announced big deals in the South since 1992," wrote *SB&D* publisher Mike Randle. "That being the case, North Carolina paid too much for the Dell deal."

Randle said that North Carolina had to overpay for Dell because it had missed out on every "signature deal" for the last 10 years.

"Their incentives have been so vanilla," Randle said in a telephone interview, "that they haven't been willing to write the check."

While perhaps one of the most effective states in turning deals that bring 100 to 200 jobs at a time, Randle said North Carolina has been weak in luring major industries. He said the state's high ratings by other economic development

publications such as *Site Selection* have been unwarranted because they are based on surveys of professionals, not on statistics. Gov. Mike Easley has taken pride in North Carolina's No. 1 ranking for business climate by *Site Selection* in recent years.

"Surveys to us, especially if they're being conducted by executives outside the region, mean nothing to us," Randle said.

He said that *SB&D* annually ranks states in the South based on numbers of economic development deals that contain more than 200 jobs each, and assigns each deal a number depending on the size of the project. The more jobs, the higher the number *SB&D* assigns. Randle said North Carolina's ranking has dropped every year since 2000, from 335 points to 160 points last year.

"There's nothing arbitrary about that," Randle said. "There's no survey."

Randle, despite his belief that the state overpaid for Dell, praised North Carolina for finally getting a "crown jewel."

"Recent economic development history in the South has proven that big corporate or industrial deals earn the state in which they are turned many times over what that state paid in incentives," Randle wrote in the *SB&D* editorial. "It's about time the folks of North Carolina took a \$250 million chance with a signature corporate citizen so they can learn that themselves."

CJ

*Bradley
Smith ad goes
here*

NC Delegation Watch

Price wants Democracy aid

The U.S. House passed a resolution authored by Reps. David Price, D-N.C., of Chapel Hill, and David Dreier, R-Calif., to establish a House commission that will assist parliaments in emerging democracies worldwide.

House Resolution 135 establishes a House Democracy Assistance Commission to better prepare parliaments in emerging democracies to oversee governmental expenditures and military operations, and to improve their capabilities in the areas of constituent services, committee operations, information services, and research.

"Since its founding, the United States has championed the development of democracy everywhere," Price said.

"We must continue to serve not just as a model, but as a partner in the effort to strengthen democracy across the globe."

Price opposed the war in Iraq.

"Our handling of the Iraq war has squandered the universal goodwill our country enjoyed after September 11th and has precipitated a meltdown in our international relations," Price says on his website.

But he also supported \$87 million in funding for troops in 2003, and helped with the development of fledgling democracies in Eastern Europe in the early 1990s.

Myrick strikes embassy funds

During debate over an emergency appropriations bill for tsunami relief and for U.S. troops, U.S. Rep. Sue Myrick, R-N.C., introduced an amendment that struck out a line item in the legislation that would have provided \$592 million for an embassy in Iraq.

"We introduced this amendment because building this embassy is not an emergency," Myrick said. "Why is an embassy in Iraq suddenly considered emergency funding when we knew we would need one from the moment Saddam's regime fell? Funding for an embassy should go through the proper process and not be slipped into an emergency bill, especially when we are trying to control spending."

Myrick said in various bills in 2003 and 2004, Congress had already appropriated \$914.6 million for the embassy.

This amendment begs the question, 'Why does Congress need to allocate \$592 million more?' she said in a press release.

The amendment passed the House by a vote of 258-170. CJ

Showdown on the Ten Commandments

Supporters say Founding Fathers wanted God in Government, others disagree

By KAREN WELSH

Contributing Editor

WASHINGTON

Never have so few words brought so much conflict. When it comes to the Ten Commandments, found both in the Torah and Bible, it's been a constant cultural, religious, and moral battle fought over the centuries in the United States.

The key issue in the battle is the term "separation between church and state," often quoted falsely as a direct statement from the U.S. Constitution. It is not. The true verbiage, by Thomas Jefferson, the third president of the United States said, "The First Amendment has erected a wall of separation between church and state, but that wall is a one directional wall," Jefferson said 200 years ago.

"It keeps the government from running the church, but it makes sure that Christian principles will always stay in government."

The legal war surrounding "separation of church and state" has been waged in the educational system, over the Pledge of Allegiance. Now, it is centered around the Ten Commandments.

U.S. Supreme Court justices have their hands on the proverbial tablets, and similar to Moses, they must decide whether to smash them or save them from the conflict surrounding the tablets' display on government property.

Critics are pushing hard to win a decisive victory. The Rev. Barry W. Lynn of Americans United for Separation of Church and State said the display of religious documents and symbols are unconstitutional.

"It's clear that the Ten Commandments is a religious document," Lynn said. "Its display is appropriate in houses of worship, but not at the seat of government."

Jan LaRue, chief counsel for the Concerned Women for America, a government watchdog group in Washington D.C., is pushing back. She said the lawsuits are meant to erase any recognition of God from public life.

"Setting the Ten Commandments on public display is an acknowledgment of the cultural and legal history of the United States," she said. "It is light years from establishing a national church, which is what the First Amendment prohibits."

What does history say?

Ruling on the basic right to display the Ten Commandments in public places could prove tricky for the justices. If they say the biblical laws are unconstitutional, then they are, in essence, saying the Founding Fathers would have opposed it. However, history proves this is not the case.

James Madison, the fourth president of the United States, said, "We have staked the whole future of America's civilization, not upon the power of government. Far from it, we have staked the future of all of our political institutions... upon the capacity of each and all of us to govern ourselves, to control ourselves, to sustain ourselves according to the Ten Commandments of God."

Half a century later, on March 27, 1854, the House Judiciary Committee presented a conclusive report after studying the issue of separation of church and state, making the matter clear to the American public.

"Had the people, during the Revolution, had any suspicion of any attempt to war against Christianity, that Revolution would have been strangled in its cradle," the report said.

"At the time of the adoption of the Constitution and the amendments, the universal sentiment was that christianity should be encouraged, not any one sect... in this age there can be no substitute for christianity... That was the religion of the founders of the republic and they expected it to remain the religion of their descendants... the great vital and conservative element in our system is the belief of our people in the pure doctrines and divine truths of the gospel of Jesus Christ."

Those who understand the precepts of American history welcome the legal showdown. Family Research Council President Tony Perkins is elated. "Finally," he said. "We welcome the opportunity for the high court to resolve the constitutionality of public displays of the Ten Commandments. Publicly displaying of the Ten Commandments recognizes the significant historical contribution made to America and the foundation the Ten Commandments have served to our legal system. It is naive and incorrect to deny that religion has had a significant historical role in defining the character of our nation. Just take a walk around Washington."

"The buildings in and around our nation's capitol reflect religious symbolism as do many other government buildings across the country. The chambers of the Supreme Court feature a carving of Moses holding the Ten Commandments."

The religious heritage of the nation hasn't stopped religious groups from speaking out. A 34-page amicus brief provided by HAF, a non-profit, nonpartisan organization promoting the Hindu



Carolina Journal photo by Richard Wagner
A caravan of Ten Commandment activists stopped at the N.C. State Capitol last year.

and American ideals of understanding, tolerance, and pluralism said that although the organization respects the Ten Commandments, the prominent presence of the Judeo-Christian laws imply the political and social exclusion of Hindus, Jains, and Buddhists.

Non-Christian faiths excluded?

According to the brief, the Federal Court of Appeals has ignored the effects of the public display of the Ten Commandments on non-Christians, whose belief system regarding the nature of God, and the relationship between man and God are different from the biblical laws etched in stone or displayed in other forms at courthouses and other government facilities.

In other sections of the brief, it explains on the Hindu concepts of pantheistic monotheism, the omnipotence and omnipresence of God, and the use of consecrated images in worship that directly conflict with specific Commandments. It also states how the Jain and Buddhist have no concept of a Creator-controller God, making it irreconcilable with the premise of the biblical Commandments.

However, Patrick Henry, a Founding father of America, said the public placement of the Ten Commandments is the very reason other religions freely exist in America. "It cannot be emphasized too strongly or too often that this great nation was founded, not by religionists, but by Christians, not on religions, but on the gospel of Jesus Christ," Henry said. "For this very reason peoples of other faiths have been afforded asylum, prosperity and freedom of worship here."

LaRue said the denial of the historical value of the Ten Commandments would bring certain ruin to the moral fiber of the nation. She is hopeful the court will see the religious and moral tug-of-war in the same light.

A final decision from the court is expected in June. CJ

Randy Barnett: Restoring Numerous Holes in the Constitution

By CAROLINA JOURNAL STAFF

RALEIGH

The cover of a recently released book, *Restoring the Lost Constitution: The Presumption of Liberty*, pays homage to the old adage that a picture is worth a thousand words. The cover of the book shows the first page of the U.S. Constitution with numerous holes in it, as if whole words and passages had simply been cut out. It is an appropriate representation of the thesis that the author of the book, Randy Barnett, is conveying: The Constitution as it is now understood and enforced by the U.S. Supreme Court bears little resemblance to the document that was actually signed in 1787.

Barnett is the Austin B. Fletcher Professor at Boston University School of Law. He has taught cyberlaw, contracts, constitutional law, criminal law, evidence, agency and partnership, jurisprudence, and torts.

He discussed his book at a recent headliner luncheon hosted by the John Locke Foundation in Raleigh, and he joined John Hood for an interview during his visit.

Hood: Tell us a little bit about the portion or portions of the U.S. Constitution that have in fact been lost since the founding.

Barnett: Well, for 200 years the Supreme Court has been interpreting key passages of the text as though they weren't there, and that has resulted in a flip of the Constitution from what originally was a system based on islands of governmental powers in a sea of individual liberty rights into what we have now, which is a system based on islands of individual liberty rights in a sea of governmental powers.

Hood: That feels like a really important point to emphasize. Oftentimes we see political debates or legal or constitutional debates consist of someone making a claim that the Constitution in some specific way authorizes a right or protects somebody or some institution from somebody else.

So the assumption is that unless there is something spelled out verbatim in the Constitution — you know, “I have a right to travel without an identification paper,” or something. Unless that is specified in the Constitution, the assumption is that I don't, that the government has whatever powers are not specifically denied to the government. You are suggesting that misunderstands the nature of the Constitution.

Barnett: Absolutely. For most Americans the whole Constitution consists of the rights in the Bill of Rights — those that are spelled out. That's it. That's the only part of the Constitution they know about and it's really not their fault because it tends to be the only part of the Constitution the Supreme Court has really cared about. What they don't realize is that there is a list of powers in Article I Section I that is supposed to limit the power of Congress, the federal



Randy Barnett speaks at the luncheon, sponsored by the John Locke Foundation.

government, to the items on that list. And what happened is beginning very early on, but especially since the 1930s, some of those powers have been greatly expanded to the point where now as a practical matter, Congress considers itself to have an unlimited power to do pretty much whatever it wants.

Hood: Well, when you go to that Article I Section of the U.S. Constitution and you read the enumerated powers, the way lots of people think of that today is, it's kind of a suggestion list. It's a to-do list. Occasionally you might want to declare war and, you know, have post roads or something, but then you get to do whatever else you want because there's this language about all laws necessary and proper.

Barnett: Right. But it's all laws, as James Madison explained, in a speech opposing the constitutionality of the First National Bank, it's

all laws which are necessary and proper to carry into effect one of the enumerated powers and so if you're not trying to do one of the enumerated powers, one of the items on that list, necessary and proper clauses, is supposed to kick in.

And the clause on the list that has been greatly expanded especially since the 1930s has been the Commerce Clause, which gives Congress the power to regulate commerce with foreign nations and among the several states and with Indian tribes. And it's among the several states portion of the Commerce Clause that has been greatly expanded to give Congress almost plenary power over everything.

Hood: Because ultimately almost anything that happens within the United States has some commercial aspect to it. If you do virtually anything that involves buying or selling, it's commercial, and if it crosses

state lines it has at least been interpreted in the past to mean it is interstate commerce.

Barnett: If the Congress would just limit itself to things with commercial aspects to it, it would have to greatly cut back on its powers. That is beyond the original meaning of the Commerce Clause, but it's much short of what Congress claims. Congress, with the sanction of the United States Supreme Court, they claim power over anything that has an effect on the economy. On economic activity. On commerce.

Hood: The weather would have an effect...

Barnett: Right. Well, so as a result, and because everything has an effect on the economy, that's what gives them the power over everything. And that's a judicially made doctrine. It started... It's called the Substan-

tial Effects Doctrine. It was decided in a famous case called *Wickard v. Filburn* in 1942 and ever since then it's gotten expanded, not contracted, until 1995, which was the first time in 60 years that the Supreme Court actually found a limit to Congress's power under the Commerce Clause in the case of the *United States v. Lopez*, which was the Gun-Free School Zone Act.

Hood: That was the first time in a long time that the Supreme Court was willing to limit the scope of the Commerce Clause.

Barnett: Right. And then it did it again in *United States v. Morrison* in 2000, and now we're asking it in the case that I argued in the Supreme Court in November, we're asking to do it a third time in the case of *Ashcroft v. Raich*, which was a medical cannabis case out of California.

Hood: And this is where the states, California and other states actually...

Barnett: Eleven other states.

Hood: Have made legal use of marijuana for medicinal purposes...

Barnett: Recommended by a physician.

Hood: And the Feds have come in and said, “No, we're not going to allow that to exist.”

Barnett: Well, they allow the state right laws to be in effect, but they still are going to go after people who do this that's legal under state law. One of my clients is growing it for herself, and the other client has two John Doe caregivers who grow it for her at no charge and so there is no commercial activity whatsoever and of course the government argues, well, this can affect the interstate market for illicit marijuana.

Hood: Well, what doesn't affect commerce?

Barnett: By that argument, and Madison and Jefferson both said, in fact Jefferson said that if you use that form of reasoning, it's familiar to anybody who ever played the game This Is the House that Jack Built in which everything is connected to everything else and therefore you could get to everything. And that was Thomas Jefferson.

Hood: Now the presumption of liberty in the title refers in part to the idea that government ought to be limited to its enumerated powers but also to the 9th Amendment, which kind of flips what people's common perception of presumption is; the presumption as we said earlier should not be that government has the right to do anything that is not specifically prohibited from. It really ought to be the other way around, that the enumeration of rights in the Bill of Rights is not an exhaustive list. It is kind of a list of examples of broader freedoms that we enjoy.

Barnett: That's one of the most important holes that have been cut in the Constitution, which is the wording of the 9th Amendment, which says: The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. What I argue in the book is the presumption that all liberty should be given the same protective presumption; that the freedom of speech, press, and assembly are given because they are enumerated rights. And that just means the burden of proof should be on the government to justify the necessity and propriety of its laws before they are deemed to be constitutional. *cj*

“Carolina Journal Radio” is an hour-long newsmagazine broadcast each weekend on 18 stations across the state.

State School Briefs

Costly school construction

Soaring costs are putting school construction projects throughout the Triangle as much as a third over budget. That means some jobs may be delayed or trimmed to save money, *The News & Observer* of Raleigh reports.

One reason is higher prices for building materials. Another is the volume of work. With more than \$2.5 billion in local school building projects, there aren't enough contractors and construction workers to go around.

That means college students will have crowded dorms, new schools and renovations will have to wait and taxpayers will foot the bills for cheaper materials that might not last as long.

In the most acute case, the Wake County school board agreed recently to delay \$31.5 million in projects approved by voters and instead use the money to cover extra costs in buildings that will soon be under way.

"It looks like there's a construction boom going on," said Don Haydon, Wake schools' associate superintendent for auxiliary services. "That means there's much more work out there, so contractors are not as hungry... That \$31.5 million may not be enough."

Service-industry classes cut

The Future Farmers of America are busy during the summer months. They compete in state-level events, attend summer camps and produce individual projects.

Those high school students need teachers to help keep them on the right track. But drastic financial cutbacks will reduce the number of educators available to help these students during the summer, the *Shelby Star* reports.

However, the state budget didn't cause the financial loss — it's the direct result of last year's merger of Cleveland County, Shelby City, and Kings Mountain District schools.

Agriculture students aren't alone. Career and technology programs across Cleveland County must cut or provide about \$490,000 in funding before the 2006-07 school year — the equivalent of 100 months of employment.

Those programs include agriculture education, future nurses and other service-industry programs that prepare students for continuing education. Some of the classes are required for anyone planning to attend college. *CJ*

Catholic Schools in N.C. Are on a Roll

Diocese of Raleigh includes central, eastern regions of the state

By MAXIMILIAN LONGLEY
Contributing Editor

Running parallel to the public school system in the Triangle is a group of Roman Catholic parochial schools, virtually all run by the Catholic Diocese of Raleigh. The education offered to the largely, but not exclusively Catholic student body, about 20 percent of which is non-Catholic, may serve as an alternative model of education.

The Diocese of Raleigh takes in counties in central and eastern North Carolina, including the Triangle.

Most of the Roman Catholic schools in the Triangle provide education for students from kindergarten through the eighth-grade. In the K-8 field, Wake County has Cathedral Elementary, Franciscan Catholic School, Our Lady of Lourdes, St. Catherine of Siena, St. Mary Magdalene, St. Michael the Archangel, and St. Raphael. Orange County has St. Mary in Hillsborough and St. Thomas More in Chapel Hill. Durham County has Immaculata.

The Diocese of Raleigh has one high school: Cardinal Gibbons, which serves grades nine to 12. There is another Catholic high school in Raleigh, St. Thomas More Academy (not to be confused with St. Thomas More in Orange County). St. Thomas More Academy is not part of the diocesan school system, although it needs diocesan approval for its religious education program.

Dr. Michael Fedewa, superintendent of schools for the Raleigh Diocese, explains that until the last couple of decades, the Raleigh Diocese had only five schools, some of them founded when North Carolina was still considered mission territory: Our Lady of Lourdes, Cathedral School, Cardinal Gibbons, Orange County's St. Thomas More, and Durham's Immaculata. With the increase of the Roman Catholic population in recent years, additional schools have been built.

Making the grade

Like all private and parochial schools in North Carolina, the schools of the Raleigh Diocese are required by state law to administer "nationally standardized" tests to students in third, sixth and ninth grade. The diocese has chosen the Iowa Test of Basic Skills as the benchmark test through eighth grade, and administers the test for each grade. Students' percentile rankings among other students nationwide taking the test are in the eighties. The schools' percentile rankings among other schools nationwide taking the test are in the nineties.

Fedewa says the tests are given in the fall, so that teachers can see the



Photo courtesy of Our Lady of Perpetual Help Catholic School
Our Lady of Perpetual Help Catholic School pupils in Rocky Mount visit Vollmer Farm.

results and diagnose the strengths and weaknesses of their students. Instruction does not center around the tests, Fedewa said: There is "no high-stakes testing."

Tuition at the Catholic schools varies from \$3,000 to \$5,000 per year, Fedewa said. According to Immaculate Conception's Web site, tuition in the K-8 program (and in a pre-kindergarten program) varies according to various factors — from \$5,294 for families unaffiliated with a Roman Catholic parish, to \$4,015 for families affiliated specifically with Immaculate Conception parish (families who enrolled multiple children before 1999 get tuition discounts, but large families whose children enroll later than 1999 no longer get discounts). Financial aid is sometimes offered for poor families.

The "greatest challenge" to the Catholic schools is finance, Fedewa said.

In the past, the teaching staff was dominated by priests, monks, and nuns, who did not require extra pay for their teaching duties. Today, 98 percent of the teaching staff in the diocese are laypersons. The diocese pays the lay teachers a "just and competitive wage," Fedewa said. These and other expenses of the schools are paid for by tuition, parish subsidies, and fund-raising.

Initiatives providing vouchers and tax credits for private-school education have been "wiped out" in the General Assembly, Fedewa said. Charter-school initiatives have "pushed aside" the voucher and tax-credit proposals, taking off some of the pressure for school choice.

If a voucher or tax-credit plan were to be enacted, Fedewa said, the dioc-

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Schools provide a role model

Catholic Schools Growing

Continued From Page 1

esan schools would cooperate unless "we had to sacrifice our programming" to get the benefits of government aid. Government assistance would not be acceptable if it was conditioned on having the Catholic schools "alter what we do." The purpose of Catholic education is to "focus on our Catholic faith" and "make the teachings of the church come to life," he said.

Cardinal Gibbons is the only diocesan high school in the Triangle (St. Thomas More Academy in Cary being largely independent of the Raleigh Diocese). Cardinal Gibbons in many ways resembles a well-run public high school, rather than the stereotypical pre-Vatican II parochial school where tough priests and ruler-wielding nuns sternly enforce good behavior and correct doctrine on boys in suits and girls in full-length dresses.

Instead of this, all but six of the teachers are laypersons, and the dress code, while strict (no T-shirts, no jeans, no jackets unless they bear the school's logo, girls must dress modestly, etc.), still allows students to wear street clothes, and full-length skirts or trousers are not required.

Not your average school

Despite these changes, many features of Cardinal Gibbons still distinguish it from a public high school. There are theology courses that students must take in order to graduate. There are crucifixes in the classrooms. There are morning Masses that students must attend, and there is a chapel for private devotions. The school is administered by the Franciscan Brothers of Brooklyn, and there's a statue of St. Francis in the school theater (whose stage can double as an altar for Mass).

Jason Curtis, Cardinal Gibbons' assistant principal for administration (and moderator of the student Surf Club), said the student body has grown considerably in the past 10 years from about 300 to 1,011. Curiously, the recent increase in the Triangle's Hispanic population has not been fully reflected in the student body at Cardinal Gibbons and its feeder schools.

Cardinal Gibbons, Curtis said, is "[a]ble to accept a large number of the applicants," although some folks have a false impression that it is difficult to enroll at the school. Alumni of the school have told Curtis that their education at Cardinal Gibbons prepared them for college, as well as supplying a "caring environment."

Carolina Journal sat in on Cardinal Gibbons' class on Holocaust literature, a required course in the English Department for juniors and seniors. The teacher, Michael Rogosich, is also in charge of student activities at Cardinal Gibbons.

Rogosich reads two short stories from a collection by Ida Fink entitled *A Scrap of Time and Other Stories*. Fink, who hid from the Nazis in Poland during the Holocaust, has fictionalized several stories about Jews' Holocaust experiences.

After Rogosich reads each story, two students comment on it, and then the floor is open for a class discussion.

"Aryan Papers," the first short story, is about a 16-year-old Jewish girl, who with her mother is posing as a Gentile in German-occupied Poland.

The girl goes to her boss's apartment, where she trades her virginity and a sum of money in exchange for forged documents certifying her mother and herself as Aryans. Rogosich notes the difference in responses to this story between the male and female students.

The second short story, "Inspector Von Galoshinsky," stars a Jew who has just been arrested and sent to a concentration camp. The other inmates play a joke on the new arrival. Von Galoshinsky, an inmate posing as a prison guard, interrogates and humiliates the newcomer. After some student discussion on the motivation for this harassment, Rogosich avers that it is a form of hazing, drawing a comparison with the way the juniors and seniors at Cardinal Gibbons haze the freshmen (though his comparison doesn't imply that hazing at the school is as bad as the hazing in the short story).

CJ visited the media center (library), where teacher and administrator Ron Smith, a former Navy man, was supervising his sophomore theology students. The students' assignment was to write a paper about an event in the New Testament (other than something that happened during Holy Week).

As librarian Catherine Spratley showed the students some reference books and instructed them on the use of an online database, Smith explained to CJ how students at Cardinal Gibbons learn how to write properly. Each student gets a notebook containing detailed instructions on the proper format for citations, as well as other information on how to prepare acceptable papers. Smith boasts that students want to keep these notebooks with them in college, because it prepares them well for doing acceptable college work. CJ

Cardinal Gibbons in many ways resembles a well-run public high school, rather than the stereotypical parochial school.

Commentary

ABCs: Patching a Broken System

Accountability for results" has become a common catchphrase in education, representing a valuable component of any reform package. But what happens when accountability programs fail to consistently deliver reliable, valid feedback on student performance?

Such is the question posed by legislators in our state, who want to take a closer look at the ABCs, North Carolina's school accountability program. Last year, the General Assembly called for a comprehensive review by the State Board of Education of ABCs standards — the inevitable result of widespread criticism. This month, as the evaluation begins, parents, school officials, and even state school board members are questioning the credibility of North Carolina's accountability cornerstone.

The ABCs (an acronym for Accountability, Basic skills, and Control at the local level) became law in 1996. Currently, schools are held accountable for two aspects of achievement: proficiency and growth. In the realm of proficiency, current debate centers on the "minimal" standard set for proficiency: Should the state raise the cut scores for proficiency levels? Unfortunately, any change would be complicated by the fact that both state and federal accountability programs use proficiency levels to calculate whether schools are meeting performance goals. North Carolina plans to reach its target of having 100 percent of students proficient in the next nine years by setting incremental reading and math target goals.

And under federal education requirements, every state must have 100 percent of its students at proficient levels by 2013-14. If the cut score for proficiency is raised, however, incremental goals — at both the state and federal levels — will become more difficult to attain. Ultimately, because these scores are used in both state and federal calculations, change is probably not on the horizon.

Measurements for student achievement growth represent a more promising arena for reform. In the past, the student growth formula has been extremely complicated; proposed modifications are

now focused on making formulas easy to understand. Changes would also involve including the percentage of students who actually achieve expected or high growth. In the past, designations have not reflected the number of students making expected or high growth, but simply the overall combined growth of all students in a given school.

This has allowed schools to achieve high growth with only a small percentage of students making great strides, and with a majority of students below grade level. In fact, in 2002-03, 94 percent of schools made high or expected growth, forcing legislators to pay an extra (and unexpected) \$44 million in bonuses.

Unlike proficiency levels, growth formulas are likely to change, as they are not linked to the federal accountability program.

Any modifications to growth formulas will also have financial implications, as these formulas provide the basis for teachers' financial incentives.

In the past, incentives have been attached to the school, rather than the teacher, meaning that all certified staff members in a high or expected growth school receive incentive awards.

The flaw with this policy is that the weakest teacher and the most effective teacher in a high-performing school receive the same award. Similarly, good teachers in poor-performing schools are overlooked. At this time, no one has raised the prospect of modifying this counterproductive and misguided practice. If formulas are changed, educators ought to consider adopting a policy that rewards teachers based on individual merit.

Clearly, a review of the ABCs by the state board is overdue. Yet even an overhaul of accountability standards will not resolve the widespread, systemic problems that plague our education monopoly. Meaningful change will take place only when legislators are prepared to open the education system to the free market. Until that time, we are left to tinker around the edges, patching an already broken system. CJ



Lindalyn Kakadelis

Kakadelis, a former schoolteacher, is director of the North Carolina Education Alliance. Visit NCEducationAlliance.org for more information about its programs.

School Reform Notes

Save Our Summers sues

Parents and business leaders who fought to force N.C. schools to open no earlier than Aug. 25 say they planned to sue the state March 11. They contend that the N.C. Board of Education has granted too many exemptions that would let some classrooms open early in August, *The News & Observer* of Raleigh reports.

Some of the exemptions were granted illegally, the advocates argue, and could open the door to letting most schools opt out of the later start date.

"The board didn't take the time to investigate who needs a waiver and who doesn't," said Amy Hobbs of the group Save Our Summers, a parent group with ties to N.C. hotel owners. The group pushed for the later start date.

So far, 77 schools in 14 school districts have applied for the academic waivers and the state school board has approved 27.

She said lawyers will file a petition with the Office of Administrative Hearings, whose judges field complaints against state agencies.

Hobbs also objects to legislation filed in early March by a Jackson County lawmaker, saying it would effectively nullify the school calendar change if it passes.

State educators said school systems are having trouble adjusting to some changes the new law requires.

State lawmakers approved the tighter school-start restrictions last July after a two-year push from parents and the travel and tourism industry. The changes will take effect this summer.

Super-gifted program OK

A divided Chapel Hill school board voted in early March to open a program for super-intelligent middle school students by August, *The News & Observer* of Raleigh reports.

Because a fall-semester debut will put it one year ahead of the timeline administrators recommend, the plan was approved by a narrow margin. Dissenting members expressed fears that the program will come out half-baked.

For months, the Chapel Hill-Carrboro City Schools board has considered stretching a program called Tier I for extremely bright fourth- and fifth-grade students into the middle school level. It's not designed for moderately gifted children, but for students who can handle work several grade levels beyond their average peers. *CJ*

State Tries to Retain Retired Teachers

Officials study incentives that would encourage teachers to stay in class

By MAXIMILIAN LONGLEY

Contributing Editor

DURHAM

State law imposes certain salary restrictions on teachers and state employees who retire and later return to government work.

In a budget bill approved in late 1998, the General Assembly made special provision for retired public-school teachers who returned to work. Starting in 1999, some of these teachers would be exempt from the salary cap. The exemption applied to retirees filling in for other teachers, or retirees taking teaching jobs at underperforming schools or schools with a teacher shortage.

A retired teacher would have to take a 12-month break from teaching, or else work only as a substitute teacher, before being allowed to return to regular work and simultaneously draw a salary. The teacher exemption took effect in 1999.

The exemption was expanded in 2000 to let retirees be hired as permanent employees at any school, regardless of whether the school is low-performing or understaffed. Another broadening of the exemption took place in 2001, when the waiting period between retirement and re-employment was shortened from 12 months to six. There is a sunset clause in the exemption that has been extended from year to year. The exemption is currently scheduled to sunset June 30, 2005.

Teachers lost to other states

Linda Suggs, legislative director of the State Board of Education, sees a need for the exemption. She said that counties bordering on Virginia, Tennessee, South Carolina, and Georgia are losing veteran teachers to the public-school systems in those other states. Suggs said "we have a long border" with neighboring states that offer more attractive packages to veteran teachers. A teacher from a county bordering Virginia recently emailed Suggs to say she can get a better deal in Virginia than in this state. Addressing the teacher shortage in the public schools includes getting veteran teachers to stay on, Suggs says. She said that teachers nearing retirement age could be induced to stay in the school system for a few more years "if we sweeten the pot enough."

Ellen C. Greaves, executive director of the Professional Educators of North Carolina, said many veteran teachers "feel like they'd be fools to continue" after becoming eligible for retirement after 30 years. She said the state continues to "lose teachers who retire at the age of 52."

Rep. Douglas Yongue, D-Laurinburg, himself a retired educator, is chairman of the Appropriations Committee's

Education Committee, and speaks of a shortage of teachers in the state. Re-employing retired teachers without subjecting them to the salary cap is "kind of a bonus thing" that could persuade long-serving teachers to continue in their posts. Yongue is a cosponsor of a bill (H247) that would extend the expiration date for the teacher exemption from June 30, 2005 to June 30, 2007.

Legislation for teachers

Another bill in the legislative hopper, H59, would extend the teacher exemption another year — to June 2006 — and broaden its scope so as to include "guidance counselors and media specialists."

The budget bill in 2004 imposed a Reemployed Teacher Contribution Rate on school districts that hired retired teachers. School boards must pay 11.7 percent of any rehired teacher's salary.

By the time in late July, 2004, when the budget bill containing the 11.7 percent salary contribution was approved, school districts had already made agreements with teachers for the upcoming school year, said Ellen Greaves of the Professional Educators of North Carolina. Many school districts responded to the passage of the Reemployed Teacher Contribution Rate by imposing pay cuts on re-employed teachers so as to make up for the 11.7 percent charge. This is "certainly a disincentive" for veteran teachers who are considering returning to work after retirement.

The bill to extend the teachers' exemption would also repeal the Reemployed Teacher Contribution Rate. Yongue would like to get rid of the 11.7 percent charge, but if it's going to be paid he said he thinks it should be paid by the school boards, not by deductions from teachers' income.

Linda Suggs said the Reemployed Teacher Contribution Rate has led to "disappointment" and "misunderstanding." Suggs reports getting calls from re-employed teachers who complained about having the rules changed to their detriment.

Greaves said she doesn't like the fact that retired teachers have to wait six months before returning to work. Greaves would like to see the legislature reduce it to two months. Yongue would also like to reduce the waiting period from six months to two.

Sen. John Garwood, R-N. Wilkesboro, has in the past introduced legislation to reduce the retirement waiting period by two months, but questions

have arisen as to whether the federal Internal Revenue Service would accept this. Pension plans have to meet federal requirements in order to avoid tax penalties, and the "powers that be," as Garwood expresses it, haven't been able to get the IRS to rule on the issue. Without IRS guidance, Garwood said he's "afraid to fool with it."

Teachers and IRS tax code

There has been no shortage of effort by North Carolina to get the IRS to give some guidance. In 2002, the General Assembly called on the state treasurer's office to get a private letter ruling from the IRS on how to allow for the re-employment of retired state employees and teachers without running afoul of the federal tax code. The legislature was specifically interested in what constituted a "bona fide separation from service," and in how long a retiree would have to wait before returning to work. In the 2004 budget bill, in addition to giving the Treasury's Retirement Systems Division greater flexibility in seeking an IRS ruling, the legislature mandated that the division conduct a thorough study of the

whole issue of postretirement employment and recommend "an efficient and fiscally sound policy."

The resulting report of the Retirement Systems Division, released in February, said that the purpose

of the state's pension system is "to provide income security for old and incapacitated state employees." Going beyond that purpose in order to supplement the income of veteran teachers who are working full time might not only raise problems with the IRS, but could lead to extra expenses, according to the report.

The report finds that the salary cap is consistent with the state retirement system's purpose of providing retirees with a replacement for their former income, not an addition to it. The cap ensures that retirees who return to work won't get paid more than they were paid before retirement, counting both their pension and salary as income.

Teachers' exemption from the salary cap is the sole existing exemption, the report said. When retired teachers are rehired at their previous salary while still drawing a pension, it could entail a de facto rate of pay that is about 150 percent. "It is reasonable to expect," the report dryly notes, "that the average employee offered an opportunity to increase his or her income by fifty percent (50%) would probably do so." *CJ*

Suggs said "we have a long border" with neighboring states that offer more attractive packages to veteran teachers.

An 'absurd level of political correctness,' Fletcher says

Schools Report Early Progress of Program to Prevent Bullying

By KAREN WELSH
Contributing Editor

RALEIGH

The N.C. State Board of Education decided to stop turning a blind eye to a declining school climate when it adopted the "anti-harassment/bullying policy" in July 2004.

The NCSBE informed all school districts in the state to create an effective plan "to develop and maintain policies and procedures to prevent, intervene, investigate, document and report all forms of harassment" in place by January 2005.

The edict is an effort to curb skyrocketing numbers of belligerent, disruptive, rude, and violent behavior in the school system, said NCSBE Board Chairman Howard Lee. "The bully incidences in the North Carolina high schools have been on the rise the last three to four years," he said. "The new policy gives the school authorities a strong base to let the students know they can take decisive action on the issue."

Not everyone agrees with the board's action. In an editorial, Bill Fletcher, a former Republican candidate for the N.C. state superintendent race, said the new policy has taken political correctness to an "absurd level." He said it "doesn't address what a bully is, how bullying should be defined, or how bullying should be punished."

Instead, Fletcher said, the policy attempts to control what students think. "Under the guise of protecting students

from bullies, the board defines motivations (thoughts) that would be unacceptable to the board," he said. "The issue in our schools is not so much 'why' a student bullies, but the actual behavior that constitutes bullying."

There is evidence, however, that anti-bullying/harassment policies can work in the public school setting. An independent study on a Bully-Free School Zone Character Education Program found stricter guidelines have created a safer, calmer, and orderly environment in which all students thrive.

The analysis, provided in a December 2004 dissertation by Richard Spurling for the Department of Educational Leadership and Policy Analysis at East Tennessee State University doctoral program, focused mainly on Rockman Middle School in Rockville, N.C.

The data Spurling used were collected through the School Information Management System, DPI testing information, and school discipline records.

He said Rockman Middle School has provided training and educational resources on bullying for its administration, staff, teachers, parents, and students for the past three years. At the beginning of each school year officials hand out manuals providing tips on how students can deal with bullying. The staff also stresses the school's mission statement to "coexist peacefully, appreciate differences, solve problems, control anger and look out for one another."

Spurling also said students, parents, and teachers are asked to sign a pledge agreeing to value student differences, treat each other with respect, be alert around less-supervised areas, and support students who are being bullied.

This is followed up with character education throughout the year, frequent reminders and role-playing bullying scenarios.

"I have seen that the strength of the anti-bullying program at Rockman Middle School is in the conviction of all involved," Spurling said. "In understanding they have a responsibility to teach, encourage and remind students to treat each other with kindness and respect while offering appropriate modeling."

Spurling said parents are given a checklist to help identify whether their child is being bullied and they are encouraged to contact the principal if they have any suspicions of such abuse.

The study found marked differences between the 2001-02 school year, when the school implemented the program, and 2003-04. During those years, the number of aggressive incidents among students decreased from 18 per-

cent to 1 percent. Student suspensions based on aggressive behavior dropped more than 50 percent, and school attendance rose from 90.8 percent to 95.7 percent.

The incidence of bullied students also lowered from 44.8 percent to 24.6 percent, academic performance rose from 74.3 percent to 89.3 percent during the same years, and test scores increased by 15.3 percent, bringing the Rockman Middle School from a non-recognized school status to a School of Excellence as recognized by the N.C. State Department of Public Instruction during the same time period.

Only time will tell if the new Anti-Harassment/Bullying Policy will be a bonus or another mound of paperwork for overburdened school officials.

However, Lee is cautiously optimistic that the new directive will be an effective tool for all schools.

"It's too early to tell if there is going to be any change," he said. "I really hope we send a really powerful message of our intolerance to students harassing and bullying. I am hoping it will have a deep impact and that it will nip this behavior in the bud."

CJ

*Craig Shirley ad
goes here*

*NCHE AD
GOES HERE*

Course of the Month

Sponge Brain Crib Course

Online bulletin boards used by college students have become a good source of material for CM. Around course signup times disengaged students post in search of easy courses.

Those are what CM are interested in, too.

Take, for example, the following. East Carolina University students have an online gathering site called "PartyEastCarolina.com" (obviously independent from the university), which includes a "Study Hall" forum for students to discuss academic matters.

One thread on the "Study Hall" from last semester featured the plea of a student seeking an "easy professor" for English 1200.

ENGLISH 1200. COMPOSITION.

Instruction in critical reading, library research, and research writing. Analytical and argumentative writing.

The inquiring student was told about a Prof. Hal Snyder.

"Snyder is the easiest professor you can get. Talked about just the syllabus for two weeks and have done nothing in class except listen to his stories about life and watch videos," one student wrote, in the syntax-free style of online discourse. "And lastly about every week he gives a day off as a 'drafting day'. His class is extremely easy, take him."

Another thread was dedicated just to appreciating Snyder. In it students report the following:

- "I thought I signed up for English 1200, but all we've been doing all week is reading the syllabus. Should I drop?"

- "I don't think I even remember taking any notes in his class hahah"

- "i had him last semester and i don't recall taking a single page of notes. his papers are super easy. if you put a little effort into the class, you won't have a problem making an A."

- "Ummm..... I skipped again, and I asked what we did. They watched Sponge Bob Square Pants. I'm not joking."

- "i have snyder for professional writing or whatever. he's cool. Yeah we watched sponge bob too. i was pissed cause i have at 8. I could've gotten more sleep"

- "I had ol' Hal at 12:00 my freshman year and we were out of class by 12:15 everyday, he didn't even show up on most Fridays. If you want to learn something drop him, if you want to get a good grade keep him."

CJ

Office of Civil Rights Clarifies Title IX Again

OCR makes compliance easier, puts the burden of proof on itself, students

By SHANNON BLOSSER

Contributing Editor

CHAPEL HILL

A recently released clarification by the U.S. Department of Education's Office of Civil Rights makes it easier for college and universities to comply with Title IX regulations regarding athletics.

The March 17 clarification, signed by Assistant Secretary for Civil Rights James F. Manning, specifically deals with the "fully and effectively" test, the third of three prongs to determine whether a school is in compliance with the 1972 regulation that bans discrimination on the basis of sex from institutions that receive federal funding. The clarification was published on the Office of Civil Rights' Web site.

By definition, the "fully and effectively" test judges to see whether a school is "accommodating the athletic interests and abilities of its students who are under-represented in its current varsity athletic program offerings," Manning wrote.

Other prongs look to see whether a school has a history and continued practice of providing athletic opportunities for women and a proportionality requirement, which states that the ratio among male and female athletes must be similar to the ratio of male and female students.

A school only has to be in compliance with one of the three tests for the Office of Civil Rights to consider that the institution is providing "nondiscriminatory" athletic opportunities to the undergraduate population.

Title IX regulations have been used to increase the number of women's sports on college campuses across the country. However, opponents claim the administration of Title IX regulations are to blame for colleges discontinuing several men's programs, including wrestling and track and field.

A presumption of compliance

The fully and effectively test has long been considered the hardest of the three prongs for schools to comply with.

According to Manning's clarification, school administrators would only have to survey its population to determine whether there is interest in the creation of a sport for the underrepresented gender. A school would be considered in compliance with the new guidelines unless there is unmet interest sufficient to sustain a varsity team, a sufficient ability to sustain an intercollegiate team in the sport, and there is a reasonable expectation of intercollegiate competition for a team in the sport within the school's normal competitive region.

The burden of proof to determine whether a school is not in compliance

Excerpts from the Office of Civil Rights' Clarification

... Under the third compliance option, an educational institution is in compliance with Title IX's mandate to provide equal athletic participation opportunities if, despite the underrepresentation of one sex in the intercollegiate athletics program, the institution is fully and effectively accommodating the athletic interests and abilities of its students who are underrepresented in its current varsity athletic program offerings. An institution will be found in compliance with part three unless there exists a sport (s) for the underrepresented sex for which all three of the following conditions are met: (1) unmet interest sufficient to sustain a varsity team in the sport(s); (2) sufficient ability to sustain an intercollegiate team in the sport(s); and (3) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region. Thus, schools are not required to accommodate the interests and abilities of all their students or fulfill every request for the addition or elevation of particular sports, unless all three conditions are present. In this analysis, the burden of proof is on OCR (in the case of an OCR investigation or compliance review), or on students (in the case of a complaint filed with the institution under its Title IX grievance procedures), to show by a preponderance of the evidence that the institution is not in compliance with part three.

Many institutions have used questionnaires or surveys to measure student athletic interest as part of their assessment under part three. To assist institutions, this Additional Clarification is being issued with a User's Guide prepared by the National Center for Education Statistics (NCES), as well as a detailed technical report prepared by the National Institute of Statistical Sciences (NISS). These documents were prepared after careful analysis of 132 of OCR's cases involving 130 colleges and universities from 1992 to 2002. They evaluate both the effective and problematic aspects of survey instruments. OCR intends this combined document to serve as a guide to facilitate compliance with part three of the three-part test. ...

would fall on the Office of Civil Rights through its investigation or on individual students through school-based Title IX complaints.

A presumption of compliance would exist if survey results show an insufficient level of interest to support an additional varsity team for women, according to the letter.

"The presumption of compliance can only be overcome if OCR finds direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team, such as the recent elimination of a viable team for the underrepresented sex or a recent, broad-based petition from an existing club team for elevation to varsity status," Manning wrote. "Where the Model Survey shows insufficient interest to field a varsity team, OCR will not exercise its discretion to conduct a compliance review of that institution's implementation of the three-part test."

Manning said schools were already using student surveys to determine if it is meeting the athletic needs of underrepresented sexes. When results show that there is insufficient support for the creation of a sport, the school would be considered in compliance.

The survey would be sent to all undergraduate students or to all students of the under-represented sex, Manning said. Along with the clarification, the Office of Civil Rights gave col-

lege officials information regarding a survey and how to administer it on campus through a "User Guide and Technical Manual."

"Where the Model Survey shows insufficient interest to field a varsity team, OCR will not exercise its discretion to conduct a compliance review of that institution's implementation of the three-part test," Manning said.

While the clarification centers on the third prong of the three-part test, Manning writes that schools should not overlook the importance of the other two prongs when attempting to be in compliance of Title IX regulations.

"Despite the focus on part three, OCR strongly reiterates that each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities," Manning wrote. "In essence, each part of the three-part test is a safe harbor."

According to NCAA statistics, in the past 15 years cross-country programs have seen the majority of cuts by schools wanting to be compliant with Title IX regulations. A total of 183 programs have been cut in the time. Indoor track, golf, tennis, rowing, outdoor track, swimming, and wrestling have also seen significant cuts in the number of men's programs due to Title IX regulations.

CJ

Legislators consider several proposals

Bills Address NC Higher Ed

By SHANNON BLOSSER
Contributing Editor

More than a month into the 2005 regular legislative session, several proposals affecting the University of North Carolina system and the North Carolina Community College Systems have been introduced by members of both the House and the Senate.

Among other issues, the bills would address giving tuition waivers to orphans, creating new science and mathematics schools across the state, and giving the student member of the UNC Board of Governors a vote on the board.

As of this publication, all of the higher-education-related bills were still in committee and had yet to make it to the floor for a vote. Here is a look at some of the higher-education provisions under consideration:

House Bill 42: TEACCH Program Funds. Introduced on Feb. 3 by Rep. Edd Nye, D-Bladen, the bill calls for the state to appropriate \$319,747 from the fiscal 2005-06 budget to be used by the Division TEACCH program at UNC-Chapel Hill for administrative and research needs.

According to the bill, \$132,847 of the funding would go to the Raleigh TEACCH Center, while \$149,375 would be used for mandated salary increases. The remainder of the money would go to the administrative staff at the Greensboro TEACCH center and for rent increases in diagnostic clinics.

House Bill 92: UNC/BOG Student Member Vote. Introduced Feb. 7 by Rep. Alma Adams, D-Guilford, the bill would allow the student member of the University of North Carolina Board of Governors a vote on BOG issues. Currently, the student member of the Board of Governors does not have a vote. (The student member of the UNC Board of Governors is the student selected as president of the University of North Carolina Association of Student Governments.)

House Bill 183: Increase Geriatric Care Providers. Introduced Feb. 19 by Nye and Rep. Debbie Clary, R-Gaston, the bill would direct UNC and the community college system to undertake studies to increase geriatric care providers in the state. The increase, according to the bill, was recommended by the North Carolina Student Commission on Aging.

House Bill 256: AHEC Capital Funds. Introduced Feb. 16 by Rep. Joe Tolson, D-Edgecombe, and Rep. Thomas Wright, D-New Hanover, the bill

would appropriate nearly \$6.7 million from the fiscal 2006 budget to the UNC Board of Governors for capital improvement projects at area health-education centers across the state.

House Bill 371: UNC Pembroke/Historically American Indian U. Introduced Feb. 24, by Reps. Ronnie Sutton, D-Robeson, Garland Pierce, D-Scotland, and Douglas Yongue, D-Scotland, the bill would designate UNC-Pembroke as North Carolina's Historically American Indian University. UNC-Pembroke opened its doors in 1887 as Croatan Normal School, in response to a petition from the American Indian residents of Robeson County.

House Bill 536: Nursing School at UNC-W. The recently introduced bill from representatives from New Hanover County would appropriate nearly \$26 million to UNC-Wilmington from the fiscal 2006 budget. If approved, the bill would authorize funding for development and construction of a new building for the School of Nursing at UNC-Wilmington. Republican Reps.

Daniel McComas and Carolyn Justice, along with Democrat Rep. Thomas Wright are the lead sponsors of the legislation.

Senate Bill 308: Tuition Waiver/Wards of the State. Introduced by Sen. Larry Shaw, D-Cumberland, the bill

would grant tuition waivers to a student, between the ages of 17 and 23, whose guardian or parents are dead or are wards of the state.

The tuition waivers would allow the student to attend any UNC institution or community college of their choice for free. The exact cost of the program is unknown.

Senate Bill 413: MEAC Scholarship Funds. Also introduced by Shaw, this bill would appropriate \$1 million in general funds to the Mid-Eastern Athletic Conference for student scholarships. The Mid-Eastern Athletic Conference, based in Greensboro, is a NCAA Division I conference with 11 member schools, including North Carolina A&T State University.

Other member schools of the MEAC include Howard University (Washington, D.C.), Morgan State University (Baltimore, Md.), Hampton University (Hampton, Va.), Florida A&M (Tallahassee, Fla.), Bethune-Cookman College (Daytona Beach, Fla.), South Carolina State University (Orangeburg, S.C.), Coppin State University (Baltimore, Md.), Delaware State University (Dover, Del.), Norfolk State (Norfolk, Va.) and the University of Maryland-Eastern Shore (Princess Anne, Md.). CJ

Commentary

Is UNC Begging for a Lawsuit?

An observer might find the following sequence of events curious: The law school of the flagship campus of the UNC system files an amicus brief in a Supreme Court case dealing with a question in the field of public education. The case is decided largely to the law school's liking. Yet the UNC system as a whole and several individual UNC campuses might be in violation of the ruling.

Assuming our observer believes that UNC's administrators ought to respect the law, he might even go so far as to call such a situation hypocritical. If UNC wishes to avail itself of the constitutional process, it isn't unreasonable to expect that it should abide by it as well.

The UNC School of Law filed an amicus brief concerning the recent landmark Supreme Court case of *Grutter v. Bollinger*. Regardless, North Carolina continues to allow race-based scholarships in violation of the law.

The gist of *Grutter* is this: Student body "diversity" can be a compelling governmental interest, thereby overcoming the constitutional presumption against governmental action that is based upon race or ethnicity. But *Grutter* doesn't give state governments or their universities a blank check to use racial preferences at will.

Academic institutions seeking a more racially diverse student body may consider an applicant's race as only one factor of many. The Supreme Court allowed admissions policies that "[engage] in [a] highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse academic environment."

The court repeatedly emphasized the necessity of "individualized consideration." If a school evaluates applicants "in a way that makes an applicant's race or ethnicity the defining feature of his or her application," it has acted illegally. The court also made clear it's unconstitutional to "insulate" minorities from competition from all other applicants, or to implement procedures that make minority status determinative in the admissions process. In short, race-conscious admissions policies may be constitutional, but race-based policies are not.

In a recent article in *Campbell Law Review*, Mark Spencer Williams, president of the Center for Higher Education Support Services, points out that the admissions practices at several

UNC campuses are questionable. Furthermore, the state itself uses race-based policies in distributing financial aid to students.

Several UNC campuses, including UNC-CH, UNC-Asheville, and Appalachian State, have defined "diversity" very broadly. Concepts that contribute to diversity, according to these schools, include sexual orientation or religious belief. However, these campuses do not ask an applicant about either one. This failure to do so makes it look as though these campuses do not care as much about a "holistic" concept of diversity as they say.

UNC-Wilmington has not adopted such broad definitions of diversity. On the contrary, UNCW looks to historical, cultural, and socioeconomic circumstances and uses census data to make scholarship awards. But since the only census data that UNCW can use are racial statistics, Williams concludes that "UNC-Wilmington has in effect defined diversity in terms of racial categories and financial need." Doing so may cross the line between race-conscious and race-based.

What North Carolina itself does is impossible to hide. The state currently sets aside roughly 10 percent of its consolidated scholarship funds (\$745,000 of \$7.5 million) expressly for Native American financial aid applicants. If this is not a special "diversity bonus" for acquiring financial aid, or insulating minorities from competition from other applicants, then nothing is.

As Williams notes, "this 10 percent set aside for Native Americans is no different than the 16 percent set aside (16 of 100 seats reserved) for minority applicants, found unconstitutional in *Bakke*." Perhaps UNC believes that although the U.S. Constitution does not permit quotas or non-holistic review of applications for admissions purposes, it would permit them for financial aid applications.

Whatever UNC believes, it has a very good chance of finding out what the courts have to say about these issues. By continuing to use admission and financial aid policies that look to be race-based rather than merely race-conscious, the state is just begging for a lawsuit. CJ



Timothy Ferguson

Timothy Ferguson is a third-year student at UNC-Chapel Hill Law School.

Bats in the Belltower

A spectre still haunts academe — and perhaps basketball too?

In March, WPTF talk-radio host Bill Lumaye asked why academics so quickly give a pass to Communists. It's a good question. Why do so many academics harbor this lingering wistfulness about Communism? After all, academics have no problem joining the rest of us in rightly condemning Nazis and Nazism for all of their well-documented horrors. Like us, they recoil with disgust that today there are neo-Nazis and a cult of Hitler.

In the realm of atrocities, however, the Nazis are Saul to Communism's David — "Saul has slain his thousands / And David his ten thousands." So why do so many academics balk at joining the rest of us in being outraged and disgusted by communism? Why is Soviet revisionism still ongoing? Why is Castro revered, and Hugo Chavez, too? Why is Ché a cult symbol? Why, with communism's history of spectacular failures at governance and unequaled penchant for grinding individuals pell-mell beneath its gore-soaked boots, do American intellectuals continue to believe and seek to further Marxist ideas in this country?

Maybe it's because the communists supposedly had "good intentions" — New Soviet men, transcending capitalism and all that — whereas the Nazis had that race-purifying agenda. People tend to forget, however, that the Soviets had their own race-based purges. Those were just engulfed by their many, many other purges. Read Solzhenitsyn's *The Gulag Archipelago*.

Marx Madness

One of those academics, Bertell Ollman, a politics professor at New York University, took the occasion recently to treat the sport of basketball to a Marxist interpretation. Ollman, whose bio states that he has "published over a dozen books on Marxist theory and socialism, the most recent of which is *Dance of the Dialectic: Steps in Marx's Method*," is unhappy with the game of basketball. Why? As he writes in something called *Logos Journal*, it's because of basketball's "model of how society works and —

implicitly and often explicitly — how to get ahead in such a society."

"Games, of course, receive a lot of help in socializing young people to *systematically misunderstand* their society," Ollman writes (emphasis added), "from schools, churches, families, media, government and market exchanges, but only games are able to use the pleasure they generate to hide what it is they teach."

For this reason, Ollman wants to rewrite basketball rules by Marxists' view of how society works. Not doing so, he writes, "marks an ideological surrender of monumental proportions." (Presumably Ollman's not speaking of the toppled monuments to Lenin, Stalin, Ceausescu or any other Communist Ozymandias.)

Ollman proposes the following solution to the problem of basketball improperly socializing kids about how the world works.

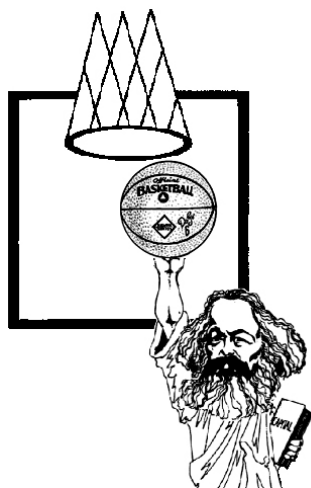
"First, I would charge an admission fee not only to watch the game but to play in it," he writes. "Second,

there should be a price paid for each shot taken, and the easier the shot, the more it should cost." He continues. "Third, as for fouls, one should be able to pay the referees, so that they never call any fouls on you," he writes. "Fourth ... the team that pays more [should] have its basket lowered, and for double that amount to have the basket the other team is going for raised."

It gets better:

"Under present rules, those players who are taller and better coordinated and can run faster and jump higher have all the advantages. My rules would exchange the advantages enjoyed by these people for other advantages that would benefit a different group, one that has been poorly served by basketball as now played. That group is the rich. With my rules, the rich would possess all the 'talent' (what it takes to win) and - more in keeping with what occurs in the rest of society — never lose a game."

That is what a Marxist would do to basketball. Imagine what they would do to government. History provides more than 100,000,000 ghastly clues. CJ



Ratliff Discusses Accountability, Reform in Higher Education

By SHANNON BLOSSER
Contributing Writer

RALEIGH

Intercollegiate Studies Institute Vice President for Programs Mike Ratliff uses a story about a University of Colorado student to discuss what he considers to be some of the problems with higher education today.

The student had originally intended to study engineering. However, some friends persuaded him to change majors to communication studies in order to have more fun in college. When the student graduated, he found out that the only job he could gain were ones that required a high-school degree. Even the military would allow him to enter only as an enlisted soldier and not the in officer training program.

A poor return on investment

To Ratliff, the student's struggle to find gainful employment after college highlights some of the problems with higher education. Ratliff thinks that higher education, as an institution, is not making a return on the investment made by taxpayers, alumni, donors, and others.

In a discussion recently at the John Locke Foundation's Shaftesbury Society luncheon, Ratliff outlined some of those concerns. He also talked about a plan by ISI to make higher education more accountable to that investment. Ratliff said that more than \$270 billion is invested in higher education each year through state appropriations or other funding.

"I don't think we are getting the results for that investment that we deserve," Ratliff said.

Few people understand the depths of some of the issues regarding the failing of higher education, Ratliff said. Several polls indicate that most Americans have a high level of respect for the performance of higher education. One poll, Ratliff quoted, stated that 80 percent of Americans would not change anything about higher education.

"That tells us that they are just not well informed," Ratliff said.

Averse to performance reviews

Why most Americans are not well-informed, Ratliff said, is because higher education as an industry avoids conducting performance reviews of its product. Without those reviews, higher education goes without any form of accountability for all its spending and programs.

Ratliff said ISI is preparing to produce a pilot program to provide a level of accountability review on the performance of higher education to educate its students properly and prepare them

for the workforce. Twenty-two schools have been selected by ISI to interview freshmen students about their knowledge of various institutions, such as government, and trace their educational progress through their final year in school. The survey will measure what the students learn and rank the schools based on its performance in educating students.

"It's time to measure the outcome of higher education on our campuses, and to do that on a recurring basis and a comprehensive basis, and to make it available to those people who can hold higher education accountable — legislators, trustees, donors, parents, and others," Ratliff said. "They need that information. If colleges and universities will not measure their product themselves, then we think there is a real opportunity for ISI, as an outside entity, to measure how they are doing and to provide that information to people who can hold them accountable."

Ratliff also briefly discussed the problem of a one-party mentality on college campuses. He described that the problem was likely to grow worse in the coming years because incoming faculty hires are even more skewed to one side of the political aisle than the present faculty makeup.

"There is a narrowness to intellectual outlook on campuses," Ratliff said.

The role of examining the performance of colleges and universities is one similar to Ratliff's previous military career before joining ISI. Ratliff, a retired U.S. Navy rear admiral, was the director of naval intelligence and looked closely at Soviet and Arabic naval operations.

Ratliff said there are parts of his 30-year naval career that correspond with his work, now, to reform higher education.

"Some of that analytically experience translates to the reform of higher education," Ratliff said.

"You are trying to understand higher education. Trying to understand what is going on there and design the effort that can be employed to drive reform there."

Ratliff said making the jump from the Navy to the public-policy field was not difficult. He had experience working with ISI through his collegiate career at Towson University and kept in constant contact with the organization during his military career.

"My wife and I really did feel that, certainly from the perspective of the summer of 2000 when I made that switch which was pre-9/11, we certainly did feel that the first line of our defense for our country was on the college campuses," Ratliff said. "That is where the next generation's thinking is being formed." CJ

Newest UNC administrator campaigns in N.H., Fla.

Early 'Edwards Center' Reality Is Far From How It Was Advertised

By JON SANDERS
Associate Editor

RALEIGH

February saw several spectacles: the whirlwind creation of the Center on Poverty, Work and Opportunity at the University of North Carolina at Chapel Hill, UNC-CH officials announcing the selection of former senator and presidential candidate John Edwards as its head and then telling folks the center would not be used for political purposes, and Edwards promising people the center would pursue "innovative and practical" ideas.

The News & Observer of Raleigh reported Feb. 5 that UNC-CH Chancellor James Moeser "said that Edwards' political motivations have been off the table during negotiations to bring him to campus." The *Charlotte Observer* reported Feb. 5 that "[Edwards] spokeswoman Kim Rubey said he didn't take the job for political reasons." The *Duke Chronicle* on Feb. 7 quoted UNC-CH trustee Richard Williams: "We wanted to make absolutely clear that this is focused on poverty and is not a political opportunity for Edwards. That is the assurance we got from the administration."

Nevertheless, the newly minted academic announced his new gig at a Democrat fund-raiser in Manchester, N.H., site of the first presidential primary in 2008. *The Union Leader* reported Feb. 6, in an article, "Presidential race on low boil as 2008 hopefuls test water," that Edwards is "taking on poverty and showing off a new stump speech" and that the new UNC center "will give Edwards a public platform and a cause, two things he will need to remain politically viable."

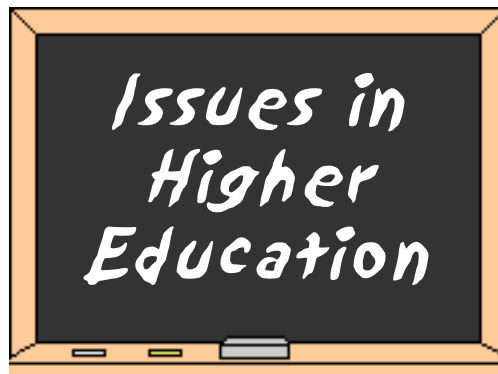
In late February Edwards was in

Broward County, Fla., to speak to a Democrat dinner there. The *Miami Herald* said Edwards "sound[ed] like the 2008 presidential candidate he says he's not — yet" and further noted that "Edwards, who arrived with an entourage of aides, still had the air of a candidate — a sign, along with his appearance in New Hampshire, that he still has presidential aspirations."

The South Florida *Sun-Sentinel* wrote that Edwards "Sound[ed] more like a future presidential candidate than a losing vice presidential nominee." The *Palm Beach Post* reported that "the former vice presidential candidate sounded an awful lot like he is running for something."

A crucial misunderstanding

The Feb. 21 *Daily Tar Heel* wrote that UNC Law School Dean Gene Nichol told a gathering to welcome the new director that "During his six years in the Senate, Edwards worked to increase both the minimum wage and the awareness of poverty in America." Increasing the minimum wage is no "innovative" idea. Nor would it be "practical" toward fighting poverty, as anyone with an "awareness of poverty" would realize. But Edwards and Nichol appear not to have this awareness; they use the terms "poverty" and "poor" interchangeably—not the sort of mistake that responsible academics seeking to ad-



dress the problem of poverty should make.

Poverty is privation, the lack of basic necessities. "Poor" is a relative marker. Being poor in America does not mean—and usually is not—living in

poverty. Even so, statistical measures of those in poverty in America generally exclude all government services (food stamps, housing aid, etc.) they receive. In other words, the poor in America are generally not in poverty, and those who are aren't as left out as Edwards *et al.* imply. Making these distinctions, while useful in getting a true grasp of the situation (preferred by scholars), does not lend itself to demagoguery (preferred by politicians).

Those lacking this awareness seek to raise the minimum wage "to fight poverty." But the minimum wage is an arbitrary price floor imposed by the government—the only people helped by it are those employees who are still valuable to their employers at the new rates. Raising the minimum wage essentially *prices out* more poor workers, and crucially, it *prices out* those who are the *least* able to find an employer willing to hire them at or above the arbitrary wage floor. Those would be the most likely to live in real poverty. In sum, rather than helping end poverty, increasing the minimum wage tends to exacerbate it because it stifles employment opportunities for the poorest.

In addition to the decidedly non-

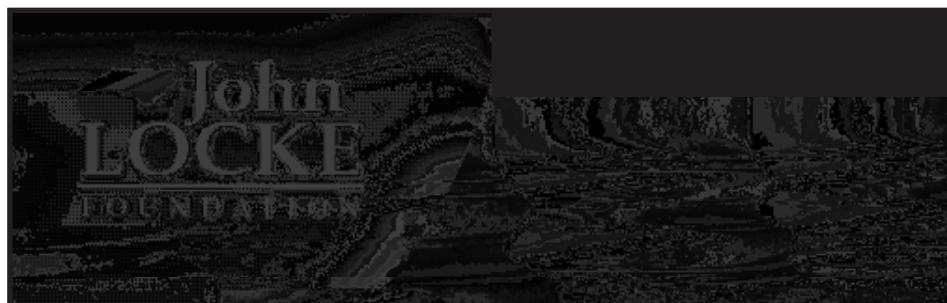
innovative call for raising the minimum wage, Edwards also predictably urged raising payroll taxes. The *Post*: "Edwards called Bush's plan to change the Social Security program 'a disaster. It undermines one of the greatest antipoverty programs in American history.'... Edwards, and most Democrats, say Bush should raise the cap on the payroll taxes that go into the trust fund."

He also euphemistically urged tax increases in general. In the words of the *Sun-Sentinel*, Edwards said that "A better alternative [to Social Security reform] would be to roll back tax cuts for the wealthiest Americans and use the money to shore up the retirement program." Other items this new poverty center head advocated were, according to the *Sun-Sentinel*, "expanding the earned income tax credit" and this very comprehensive agenda item, "doing something about inner city schools."

Epilogue: Not long after the surprise announcement of the new center and Edwards' hiring, 71 UNC-CH faculty wrote a letter in outrage over what they called "secret negotiations" being conducted by "high-level university administrators" to bring a new program to campus.

They complained about a "lack of transparency and the administration's withholding of information" concerning the program. They called it "disrespectful" and "a serious breach of trust with the faculty."

The faculty were not complaining about the "Edwards Center," however—they were complaining about negotiations between the College of Arts and Sciences and the Pope Foundation to institute a Western civilization program at UNC-CH. CJ



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Town and Country

Annexation battle goes on

The battle over whether Winston-Salem can annex 22 square miles and 18,000 residents continues, the *Winston-Salem Journal* reports.

Citizens Against Forced Annexation, a group representing people in the affected areas, is appealing decisions in two lawsuits that it filed against the city.

The first lawsuit is aimed at the methods that the city used to determine what areas it is trying to annex.

The city won that argument in Forsyth Superior Court. But after a recent ruling by the N.C. Supreme Court, the city removed properties on which about 50 residents live from the annexation plan. City Attorney Ron Seeber said the properties were excluded after the state Supreme Court ruled against the city of Asheville in a lawsuit with Carolina Power & Light Co., now known as Progress Energy.

Under state law, in order for an area to qualify for annexation, a percentage of its borders must be contiguous — next to the city limits, an urbanized area or a combination of both. The court ruled that Asheville's proposed annexation did not meet those standards.

City removes rebel flag

Charlotte officials removed a Confederate flag from a city-run cemetery that had fueled months of debate about Southern history, the *Winston-Salem Journal* reports.

On March 8, City Manager Pam Syfert ordered workers to take the flag down, saying the city should fly "the official flags of our country, our state and our city."

Flag supporters criticized the decision and said Syfert ignored their opinions.

"It's small-minded, shows an appalling ignorance of history, and the thing it shows the most is the arrogance that the folks have come to expect out of Charlotte city government," said Rich Woods, a commander of a local Sons of Confederate Veterans group.

A concrete-capped flagpole stump now sits among the graves of Confederate soldiers. Syfert said that the fenced-in area still makes a "very nice memorial."

Officials don't know how long the flag had flown over Elmwood Cemetery. It caused little controversy until June, when Warren Turner, a member of the city council, said that it could signal that the city endorses a flag that some groups use as a symbol of racial hatred. *CJ*

Public-Defender Costs Continue to Rise

Confusion over determining defendants' eligibility, breakdown of spending

By DONNA MARTINEZ

Associate Editor

WINSTON-SALEM

Spend a few minutes talking to Pete Clary and it's easy to picture this criminal defense attorney who calls the Constitution "a pretty neat thing," using his legal knowledge, charm, and wit to persuade a jury to see a case from his client's point of view.

Clary is also a staunch advocate of his role in the justice system and of the 13 attorneys he supervises as head of the 2-year-old Forsyth County Public Defender Office. He's convinced that legal representation by a public defender's office, which he likens to a specialized law firm, provides high-quality service to indigent clients. To begin with, he said, he hired some of the best attorneys around. Then, because of the volume of cases they defend, they get even better at their job, becoming criminal defense experts. There's no doubt his office has gotten plenty of practice. Between July 1, 2003 and June 30, 2004, the Forsyth office disposed of 5,460 cases involving indigent clients.

The creation of Clary's Winston-Salem office, one of 13 around the state, is among the main accomplishments touted by the state's Office of Indigent Defense Services, the agency created by the General Assembly in 2001 to improve North Carolina's administration of attorney services for those who qualify for state-appointed defense counsel. A 14th office, serving Wake County, is scheduled to open in July. Some offices handle cases in just one county while others are responsible for multiple counties. If a public defender isn't available or there's a conflict of interest, the case is farmed out to a private attorney.

The heart of IDS's mandate is to improve the quality of defense services, control spending, and collect and analyze data. Yet, nearly four years into the office's work, the fundamental determining factor for indigent services remains unclear. IDS administrators haven't set a definite standard for judges to use in deciding exactly who is and who isn't entitled to a state-supplied defense. Currently, a criminal defendant completes an "affidavit of indigency" that asks for monthly income and expenses, and assets and liabilities. The form notes the information "may be verified," that false answers "could lead to prosecution for perjury," and that if one is convicted or pleads guilty, the sentence may include repaying the cost.

From the information supplied, judges decide who is too poor to pay. IDS Assistant Director Danielle Carman isn't convinced a hard-and-fast rule is needed, but she said IDS plans to look

at developing a flexible formula that still allows judicial discretion. "Our commission is not convinced it's going to really save money. We think that probably the practice is probably working approximately as it should out there. But we do need to look at it and we plan to look at it," Carman said.

IDS should have taken that step long ago, said Peg Dorer, director of the North Carolina Conference of District Attorneys. She used to hear stories about defendants who would game the system for an attorney and then drive away in a luxury car. "As IDS, I think they would have defined what indigent actually is," she said. Although she hasn't heard talk lately, Dorer doesn't think the problem has been solved. "People got tired of talking about it," she said.

An IDS rule could affect the state's financial obligation for indigent services. For several years, demand has been growing, as have total costs, Carman said. More people are being found indigent even though nontraffic criminal filings in district and superior court declined slightly over the past four years. In fiscal 2003-2004, 767,483 cases were filed, down from 774,795 in fiscal 2001-2002. Yet despite the drop, the percentage of defendants deemed indigent jumped from 34.9 percent to 38.3 percent.

"There's really no way for us to avoid increases [in costs] when it [demand] is increasing," Carman said. "What we hope is that our spending can increase less than that, because we do think it's very important that we're fiscally responsible with the funds."

Carman said that in the seven years

before IDS was created, the average growth in state spending on indigent defense services was more than 11 percent per year. Under IDS management, the rate of growth slowed initially, but it is rising again. During fiscal 2001-2002, spending grew by just 1.36 percent over the previous year. Spending for fiscal 2002-2003 was 4.63 percent above 2001-2002, but fiscal 2003-2004 saw a 7.7 percent jump over the previous year.

While Clary's stellar assessment of his staff may be accurate, around the state, prosecutors haven't seen much difference during IDS's tenure, Dorer said. She thinks IDS has focused too much on issues related to appellate cases and capital cases in which a defendant could face the death penalty. The result, she said, is new positions and standards in those areas, but limited impact overall. "They have an obligation to better handle the bulk of the cases," Dorer said.

IDS services cost the state \$80,404,993 in fiscal 2003-2004. That figure includes: nearly \$16 million for cases in the public defender offices; nearly \$52 million for cases assigned to private counsel; just over \$1 million for the Office of the Appellate Defender; \$1.1 million for the Office of the Capital Defender; \$845,000 for involuntary commitment cases at mental health hospitals; \$5.6 million for expert witnesses, investigators, transcripts, and other services; \$580,000 for IDS; and \$3.6 million for the Sentencing Services Program.

Carman said IDS is trying to assess why costs are rising again, but the office is stymied by lack of data and inconsistent reporting. *CJ*



Attention City & County Officials

And others with an interest in local government issues

Here are some handy ways to track the latest news and research on local issues. Updated daily, www.LocalInnovation.org, from the Center for Local Innovation covers such subjects as local taxes and budgets, land-use regulation, privatization, transportation, and annexation. Also, the John Locke Foundation is creating regional pages within www.JohnLocke.org. The first one, "JLF-Charlotte," is regularly updated with original articles and links. Other pages about the Triangle, the Triad, and other parts of North Carolina are coming soon — so stay tuned!



General Assembly may increase number to six

More Toll Roads Ahead

By MICHAEL LOWREY

Associate Editor

Many years before it will collect a single dime in revenue, the N.C. Turnpike Authority might expand its scope, thanks to legislation pending in the General Assembly. The proposed changes would allow the authority to build and operate six, instead of three, toll roads in the state and comes in response to the authority identifying at least four potentially viable routes for turnpikes.

Building roads faster

The NCTA was created in 2002. The idea was to build certain expensive new roads sooner than would otherwise be possible using traditional funding sources. North Carolina allocates road money through funding formulas that limit the amount of money available to any particular region. A major new road can consume a considerable portion of a region's available funds for years and would necessarily limit the money available for other area highways.

The authority can issue bonds to pay for the construction of a road. The bonds are repaid beginning when the road opens from toll receipts. When the bonds are paid off, the tolls would end. North Carolina law does not count most of the money spent on toll roads against a region's usual funding allocation, those making turnpikes akin to a bonus.

The original legislation allowed the NCTA to build three toll roads. Of the three projects, one must be at least partially in a county with a population over 650,000 as of the 2000 census. Another of the roads can't be in a county with a population over 650,000 per the 2000 census. In 2000, Mecklenburg was the only county in the state with a population exceeding 650,000.

The statute crediting the NCTA specifically prohibits the tolling of an existing road and that a free alternative must exist to any toll road.

The authority could also identify and conduct preliminary design work on three other potential turnpikes. Actually building these roads would have required additional approval from the General Assembly.

The new legislation would eliminate this requirement and let the authority proceed directly to building the extra turnpikes. The NCTA itself recommended this change, after identifying four routes it considered worthy and did not want to leave one out for

now.

While the use of tolls to build any or all of these highways would eliminate delays caused by a lack of funding, many other factors can slow down road construction.

State and federal rules require that a number of public hearings be held and that numerous agencies issue permits before a single shovelful of earth can be moved. Design and land acquisition also typically takes a number of years to complete. As a result, even with the ability to borrow money to pay for construction, none of the potential toll roads is expected to be ready for motorists until 2010 at the earliest. For several of the projects, completion could be well after 2010 even if built as a toll road.

Potential toll routes

The four potential turnpike routes the NCTA has identified so far are:

- The Gastonia East-West Connector (Garden Parkway), a third major roadway over the Catawba River linking Mecklenburg and Gaston counties. The proposed turnpike would run from near Charlotte/Douglas International Airport through southern Gaston County and then north toward Dallas. The population requirement in the legislation was aimed at ensuring this road would be built. The 21.5-mile road is budgeted at \$289 million.

- The Cape Fear Skyway, in New Hanover and Brunswick counties, a 9.5 miles extension of Interstate 140 (Wilmington Outer Loop or US 17 Wilmington Bypass) from U.S. 17 near Town Creek to U.S. route 421 in Wilmington. The "skyway" in the name refers to the most expensive element of the proposed project, a massive bridge over the Cape Fear River. The road would cost about \$300 million.

- The Monroe Connector, a partial bypass around Monroe. Rapid growth in Union County and the associated daily commuter flows causes heavy backups on U.S. 74 between Charlotte and Monroe. The proposed route would run 11.5 miles from I-485 at U.S. 74 (Independence Blvd) in Mecklenburg County to U.S. 601 north of Monroe.

The connector could open by 2010 if built as a toll road. If built using regular state highway funds, work likely would not even start until 2018. It is estimated to cost \$193 million.

- The Triangle Parkway, a 3.2-mile southern extension of N.C. 147 (Durham Freeway) between I-40 and the future I-540 in Durham and Wake counties, which would cost about \$80 million. *CJ*

Commentary

Ineptitude, Immorality at Budget Time

Now that we are getting into the heart of local budget season, managers, elected officials, and citizen activists are exploring any and all possible ways to save taxpayer money. They do this, in premise, to prevent new rounds of property tax, fee, and sales tax increases.

With Medicaid and school funding challenges hitting counties pretty hard, it is hoped that someday soon, the state will wake from its golden slumber and realize that the system is truly broken. We can look almost anywhere and find problems that are truly systemic. Nowhere is this more apparent than the Division of Child Development.

Whoa, you say, how did you make that transition and what the heck does it mean? Well, you see, this is the division of state government that corrals both state and federal dollars and funnels them down to the counties, some of this flows directly to social services and other bits of it flow to groups like SmartStart.

Around January, the leadership of the DCD looks around the state to see which county might be saving money. Anyone near or close to the 95 percent expenditure (coefficient ratio) will be asked to send money back to the state. In theory, you would think this is a good thing, but that's not really what is happening. The DCD is actually seeing who they can "take" money away from to give to folks who have run tremendously over budget. In fact, they are literally forcing counties who have managed these funds to "justify" why their money should not be raided.

In Lee County, this money was being well managed and they were within \$4,000 of budget as of the end of January. That's when things became pretty strange. The state then took about \$50,000 from Lee to redistribute elsewhere. As a result of this, Lee would now be \$54,000 over budget despite good management. In response, the social services team in Lee then requested \$50,000 from SmartStart even though it's all tax dollars anyway. This somehow is good policy?

Had there not been strong intervention from the DSS director, this situation could have been far worse and some counties are paying the price for this ineptness. Some counties are benefiting by being inept.

Now, if you want to see this in even more egregious terms, let's look at a recent fraud case from the same county. The Fraud Unit, doing their job, discovered a provider had defrauded the county out of \$38,000. The DCD wanted the county to pay the money back to the state quickly even though the provider had not been prosecuted.

The county decided to take the case to court against the provider. In criminal court, the judge found the provider guilty, but required that only \$10,000 of the \$38,000 be paid back. OK, that's absurd, but then the case went on to civil court, where the judge there said the previous ruling wasn't tough enough and ordered the

provider to pay back \$17,000 total! It really makes you wonder what's wrong when a provider has clearly defrauded the taxpayers out of \$38,000 and then is only ordered to pay back \$17,000 while the state is demanding that the local group cough up \$38,000. To make matters worse, neither judge ordered the provider to pay the money immediately, they were given plenty of time to make arrangements and pay the money over time.

One of the major issues here is that there is such complexity in which money flows into and around counties that any one group really can't comprehend it. There are even instances where students sign up for community college courses, qualify for state-paid day care, then drop the course and keep the day care. If someone at Social Services isn't paying attention, this is easily overlooked.

So, as local officials start looking around for ways to save money, maybe they should start making more inquiries in Raleigh. As localities begin to search for efficiencies it is imperative that we understand what is happening, and this is just one tiny story in a system that needs to be redesigned.

As there is a new state auditor in place I think there should be some wary policy wonks that need to tighten their ship up or look to see how close they might be to their pension date. *CJ*



Chad Adams

Adams is vice chairman of the Lee County Board of Commissioners and director of the Center for Local Innovation. Visit www.LocalInnovation.org for more.

Local Innovation Bulletin Board

Big-Box Retail Myths

Empirical evidence shows that big-box retailers such as Wal-Mart provide numerous benefits, says Pamela Villarreal, a research associate with the National Center for Policy Analysis.

Kenneth Stone of Iowa State University found that retail sales dollars from adjacent counties are lost to counties with big-box stores. In a study on the impact of Menards home-improvement stores on Iowa counties, Stone concluded that counties with Menards stores averaged about \$21 million more in sales six years after the store opened compared to adjacent counties. Adjacent counties lost about \$5 million in sales, on the average, indicating that consumers were crossing county lines to shop at Menards.

Critics assume that the greater competitive edge of big-box retailers comes from their ability to hire fewer workers and pay them less. However, empirical evidence has not found this to be true.

Marshall University professor Michael Hicks found that West Virginia counties with Wal-Mart stores experienced a permanent net gain of about 55 retail jobs, on the average. A University of Missouri study of 1,749 counties nationwide showed that Wal-Mart counties experienced a permanent net gain of 50 retail jobs.

Bates College researchers Brian Ketchum and James Hughes showed that Wal-Mart host counties in Maine experienced a net gain in average weekly retail wages of \$8.24 relative to non-Wal-Mart counties. While this is not statistically significant, it confirms that Wal-Mart did not lower retail wages.

Property taxes up

Cities and suburbs are facing budget shortfalls while demand for local services are increasing, leaving homeowners to foot the bill in the form of higher property taxes, observers say. Many localities are trying to keep property taxes stable, but state funding cuts have prompted many to reassess home values yearly. Higher assessment values because of a booming housing market means that cities receive more tax revenues without having to raise tax rates.

Property taxes totaled \$204.5 bil-

lion in 2004, a 7.9 percent increase from 2003 and a 30 percent increase from 2000. Average property taxes on a 2,200-square-foot home rose 21 percent over four years.

However, homeowners aren't happy about the increases, and local officials must find a balance between keeping property taxes stable and funding city services such as police and fire. Consequently, some states are looking at other means to produce revenue.

Reported in *USA Today*.

Traffic signals inefficient

Traffic lights are inefficient tools to handle traffic flow and minimize accidents because they encourage drivers to travel too fast and keep dangerously close to the vehicle in front for fear of missing a green light. Kenneth Todd of the Cato Institute says this combination of high speed, tailgating, diverted attention, and sudden stops causes rear-end collisions.

In addition, traffic signals cause congestion because they don't moderate the use of the intersection efficiently: Often cars sit idly by at a red

light only to have no traffic using the green light. Overall, about 40 percent of the vehicle delays in urban areas are due to traffic signal inefficiencies.

Todd's findings suggest that using more roundabouts and more all-way stops will cut down on lost time, taxpayer expense, and accidents.

According to the Federal Highway Administration, roundabouts are far safer than traffic signals, cause less delay, and have more vehicle capacity; where used they have reduced serious-injury and fatal accidents by 60 to 90 percent. All-stop intersections have the best safety record, with half as many accidents as those controlled by two-way stops or signals; serious accidents are rare. Yield signs have a safety record as good as the stop sign, cause less delay, and allow a 50 percent higher rate of traffic flow.

The U.S. motoring public pays an estimated \$123 billion annually in lost time, wasted fuel, and other costs, plus billions more for high-tech electronics to moderate America's intersections, Todd said. *CJ*

From Cherokee to Currituck

Winston-Salem Traffic Cameras Stopped By School Transfers

By **MICHAEL LOWREY**

Associate Editor

RALEIGH

Winston-Salem's red-light camera program is on hold following a judge's ruling that the Guilford County Schools are entitled to 90 percent of the total money collected. The ruling, if upheld upon appeal, would make red-light cameras financially impractical for the city and likely for other municipalities throughout the state.

At issue is a state constitutional requirement that the "clear proceeds" from fines go to the schools. A judge ruled in December that this extends to red-light camera proceeds. In a Feb. 15 ruling, Superior Court Judge A. Moses Massey went a step further and held that state law limits the amount that localities may deduct for administrative expenses to no more than 10 percent of gross revenues. The Guilford County Schools, he held, should receive at least \$45 from every \$50 light citation.

The city had contracted out operation of the camera system to Peek Traffic, with the company getting \$27 to \$35 per citation. Winston-Salem has not renewed the contract pending appeal.

Winston-Salem could be forced to raise property taxes to repay the \$1.3 million to \$1.5 million it owes the school system under the ruling.

City attorneys had argued that "clear proceeds" means "net proceeds," allowing the city to deduct its actual cost of operating the system before turning over what's left to the schools.

Massey's ruling is not binding upon other jurisdictions. Any ruling by the state's appellate courts, the N.C. Court of Appeals, or the N.C. Supreme Court, however, would be.

Public-housing service

The Charlotte Housing Authority and other N.C. public housing agencies are starting to enforce a federal requirement that certain public housing residents perform community service.

Under the regulation enacted by Congress in late 2003, unemployed public housing residents must perform eight hours a month of community service or risk being kicked out of their units.

The CHA defines employed as working at least 20 hours per week. Disabled and elderly residents are exempt from the requirement, as are students and those receiving Section 8 hous-

ing vouchers. The housing authority estimates the new rules affect about 1,500 of Charlotte's 3,250 public-housing tenants.

The agency sent out letters last year informing residents of the requirement. It plans to conduct an audit in July to check on compliance. Residents who have not put in their hours by then will have a year to do so or face eviction.

Reaction from residents to the requirement was mixed.

"It's unfair," Yolanda Massey said to *The Charlotte Observer*. "I don't want

to be here forever, but it takes time. It seems like they are making it harder on me."

Fellow Charlotte public-housing tenant Janice Gaston disagreed. Gaston, like Massey, is unemployed.

"If you're sitting around doing nothing, why not?" Gaston asked. "What's eight hours a month?"

Marketing the Crown

In an attempt to draw more events and visitors, the Crown Coliseum in Fayetteville has increased its advertising efforts. The Cumberland County Commission gave the authority that operates the arena and associated meeting facilities an additional \$50,000 for advertising this fiscal year. The authority is also spending an additional \$100,000 to sponsor events. Total advertising and sponsorship spending will be \$450,000 this year.

The Crown's marketing efforts are aimed at overcoming the fallout of a less-than-successful marketing agreement with Arena Ventures, a partnership between Clear Channel Entertainment and the National Basketball Development League, to market the arena. Attendance at NBDL games has been below expectations while Clear Channel brought in fewer shows than hoped.

The most obvious sign of the increased promotion are daily spots on the "Carolina in the Morning" show on Wilmington's WECT Channel 6 television station. The Crown has also increased the number of billboards and newspaper and radio ads it is running in the greater Fayetteville area.

The arena is also undertaking more joint marketing efforts with the Fayetteville Area Convention and Visitors Bureau.

"It's a very efficient way to market both the facility and the community," John Meroski, the bureau's president, said to *The Fayetteville Observer*. *CJ*

Winston-Salem could be forced to raise property taxes to repay the \$1.3 million to \$1.5 million it owes under the ruling.

Center Conducts Innovation Workshops Around N.C.

Local-government officials find efficient means of providing public services for less revenue

By KAREN WELSH
Contributing Editor

RALEIGH

The Center for Local Innovation recently reinvented itself through a series of Innovation Workshops held Feb. 15-18 in various locations throughout North Carolina.

About 140 people, ranging from city officials to political activists, met in one city each day, at Wilmington, Raleigh, Charlotte, and Asheville, for a total of four consecutive meetings.

They discussed the nuts and bolts of creating stronger, more cost-effective local governments. The workshops offered topics ranging from budgeting, privatization, competition, sustainable development, merging and performance management.

Chad Adams, director of CLI, said the seminars were a success. "Taking the conference on the road gave us a different audience," he said. "We were able to work with a great collective of government leaders, staffers, and activists. It was a wonderful event and it just got better each day."

Seminar presenter Geoffrey Segal, director of Privatization and Government Reform for the Reason Foundation in Washington D.C., said the half-day seminars attracted many participants who were eager to talk and ask thoughtful questions concerning government reform.

"There certainly was a lot of engagement and discussion," he said. "People realized they could do what we were talking about. They realized there was a lot of value. They started to learn how to do it and how to get there."

Segal said the workshops were also

designed to provide perspective.

Although most community officials might think they have a unique set of characteristics and financial problems, he said, they often see how "terribly common" their plight is when individual governments finally step back for analysis.

They see that they encounter the same issues and trends that most governments are experiencing throughout the country.

One of the areas that Segal and his associate, Adrian Moore, vice president of Reason Foundation, stressed was beating the conventional wisdom on budgeting. Segal said most budgets are only line items and usually don't mean anything to the average citizen.

As a result, he said, this provides them little incentive for most people to get involved in what is going on in their local government.

The way to rectify that, Segal said, is by having individual governments create a citizen's budget. The citizen's budget would explain the mission and goal of each funded activity, show how the money is used, use performance evaluations of how the goals are achieved, provide a benchmark against other jurisdictions, and track changes over time. "It's important to make the budget transparent," he said. "Make it something the citizens can understand."

Segal also explained to workshop participants how many local governments are caught in a trap of spending revenue faster than their localities' populations are growing, causing a gap between revenue expectations and reality. He said this is a red flag that should get most governments back to "kitchen-

table economics."

"A family with a certain income doesn't have a choice," he said. "They make tough decisions about where their income will be spent. They find a way to do things better or cheaper. The government needs to start acting like a family and apply those same sort of concepts."

As a workshop panelist, Moore County Manager Steve Wyatt stressed the issue of accountability in government organizations, especially when the entities start to asking for money.

"Many government agencies are asking for big increases for their programs this year," he said. "Someone needs to look them in the eye and say, 'What difference does it make?' It is a competitive system and government officials should invest only in agencies that are successful. If not, do they continue to dump and pour money into an investment that is losing? They need to change it over to one that is winning."

It works in Moore County, Wyatt said. "It is a competition in this organization for take-home dollars," he said. "We reward those that impact the mission of the organization in positive

ways."

At the workshops, Wyatt also said he strongly supports privatizing or outsourcing government services when an agency fails to benefit its community.

He said former New York City Mayor Rudy Giuliani set a precedent when he went into local police precincts during his first days in office and told the officers in charge to reduce crime by a certain percentage or he would find someone who would get the job done.

Other speakers for one or more of the four events included Samuel Staley, director of Urban and Land Use Policy for the Reason Foundation; Tom Fetzner, former mayor of Raleigh; Hickory City Manager Mick Berry, Concord City Manager Brian Hiatt, New Hanover County Commissioner Bill Caster, and Johnston County Manager Rick Hester.

Adams said CLI is planning another series of workshops in Hickory, Greenville, Fayetteville, and New Bern in June.

For more information, go to www.localinnovation.org or contact Adams toll free at 1-866-553-4636. CJ



www.NCSPIN.com

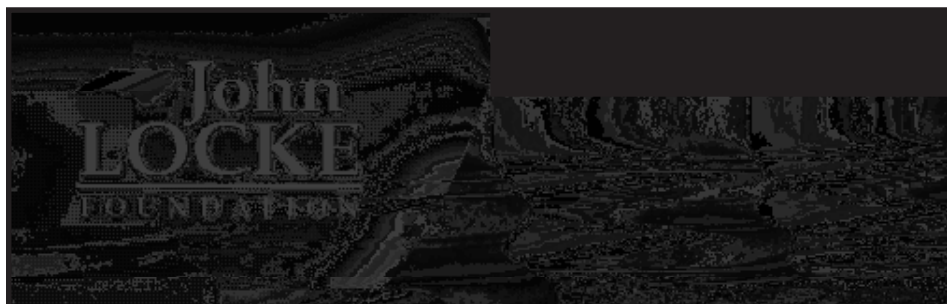
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• *In Back in Action: An American Soldier's Story of Courage, Faith, and Fortitude*, Captain David Rozelle tells his story from the day he had to tell his pregnant wife that he was going to war (Valentine's Day 2003) and deployed for Operation Iraqi Freedom, to the fateful day four months later when a land mine tore off his right foot — and beyond, through months of agonizing rehabilitation to his final triumphant recertification as "fit for duty."

Rozelle, who has been awarded the Bronze Star with Valor and the Purple Heart, speaks frankly about his post-amputation battles and the determination that saw him through.

He recounts his battle through rehabilitation, as he learned to walk with a prosthetic foot and did his utmost to prove he still had the stuff to be a soldier: completing five sprint-distance triathlons, an Olympic-distance triathlon, the New York City Marathon, and skiing, snowboarding, and mountain climbing through Disabled Sports USA. Learn more at www.regnery.com.

• *In To Rule the Waves: How the British Navy Shaped the Modern World*, Arthur Herman tells the story of how Britain's Royal Navy allowed one nation to rise to power — unprecedented in history.

From its beginnings under Henry VIII and adventurers such as John Hawkins and Francis Drake, the Royal Navy toppled one world economic system, built by Spain and Portugal after Christopher Columbus, and ushered in another — the one in which we still live today. From Harper Collins, at www.harpercollins.com.

• *Black Rednecks and White Liberals, and Other Cultural and Ethnic Issues* challenges many of the long-prevailing assumptions about blacks, Jews, Germans, slavery, and education.

Author Thomas Sowell takes on not only the current "trendy" intellectuals but also such historic interpreters of American life as Alexis de Tocqueville and Frederick Law Olmsted.

In a series of essays, Sowell looks at beliefs behind many mistaken policies and trends. He considers the historical development of the ghetto culture that is today wrongly seen as a unique black identity — a culture cheered on toward self-destruction by white liberals who consider themselves "friends" of blacks.

More at www.publicaffairsbooks.com. CJ

Movie review

The Aviator: Scorsese Takes Off But Fails to Soar

• *The Aviator*; Miramax Pictures; directed by Martin Scorsese; PG-13, 166 minutes (sexual content, brief nudity, language, violent crash sequence); starring Leonardo DiCaprio, Cate Blanchett, John C. Reilly, Alec Baldwin, Alan Alda, Ian Holm

By SAM HIEB
Contributing Editor

Martin Scorsese's wait for an Oscar will continue. Though *The Aviator* won Oscars for art direction, costume, cinematography, and film editing, it was passed over for Best Picture in favor of Clint Eastwood's *Million Dollar Baby*. Scorsese also lost out to Eastwood for the Best Director Award.

Though Scorsese was certainly a sentimental favorite to win an Academy Award, neither he nor his Howard Hughes biopic were considered favorites. Reviews of *The Aviator* were mixed. The *Chicago Sun-Times*' Roger Ebert praised it as "one of the best movies of the year," while *The New York Times*' Manohla Dargis wrote the movie was a "visually sumptuous if disappointingly hollow account of Hughes's early life." The *Seattle Post Intelligencer*'s William Arnold wrote, "As a record of Hughes' life, it can't touch the 1977 TV miniseries 'The Amazing Mr. Hughes'" (in which a young Tommy Lee Jones very convincingly played the lead role).

A success?

While the critical success of *The Aviator* is debated, the film's producer, Miramax, will wait anxiously to see if it will be a financial success. At Oscar time, the movie had recouped just under \$90 million of the \$110 million price tag, and it should bring in more on video and DVD.

So if *The Aviator* ends up falling short of financial success as well, then what went wrong? Here's an odd conspiracy theory: The movie sent mixed messages. It was produced and acted by some prominent Hollywood liberals, yet it gave a favorable impression of one of the most infamous icons of American capitalism.

Hughes, the dashing entrepreneur, constantly triumphed over adversity throughout the film, whether it was too many sunny days while trying to film *Hell's Angels* or the dastardly Sen. Owen Brewster trying to give control of the skies to archrival Pan Am.

But after seeing the movie, one has to believe Scorsese and Leonardo DiCaprio made the movie without even thinking about a political message. Hughes' biggest obstacle is his obsessive-compulsive disorder, which was perhaps brought about by an overpro-



ductive mother who bathes young Howard and in the film's opening scene warns him of the dangers of germs.

It's when Hughes is in the throes of the disorder where DiCaprio does his best acting, making the viewer truly feel for a wealthy, ambitious man trapped in a men's restroom because he's afraid to touch the doorknob.

But for the most part (and this may be where the film might still suffer commercially), you're constantly reminded that you're looking at DiCaprio playing Hughes rather than at Hughes himself.

The same is true with Cate Blanchett as Katherine Hepburn. Blanchett looks nothing like Hepburn, and with her rendition of the famous accent, she appears to be impersonating Hepburn rather than portraying her.

Hughes and Hepburn, a Golden Age-version of the Hollywood power couple, appeared to be on the road to matrimony until a key scene when Hepburn took Hughes home to Connecticut to meet her family, who came across as boorish, shallow socialists who "don't care about money."

"That's because you have it," Hughes said and promptly excused himself, obviously disgusted with the hypocrisy of wealthy liberals.

Hughes himself certainly wasn't a fiscal conservative. His right-hand man, Noah Dietrich (John C. Reilly) is the movie's foil, as he kept telling Hughes time and again he was running out of money, only to have Hughes tell him to mortgage everything.

Hughes the risk taker

Yet such daring financial planning is just part of being a risk-taking entrepreneur. So is battling government-sponsored monopolies. After he purchased TWA, he became embroiled with Pan Am President Juan Trippe (Alec

Baldwin), who seeks dominion over the skies for his airplanes. Trippe is assisted by Brewster (Alan Alda), who used less-than-savory means to get into Hughes' complex mind.

Brewster not only instructed federal agents to raid Hughes' office, where they "touch things," he also took advantage of Hughes' disorder. In one scene, Brewster cleverly placed a fingerprint on Hughes' water glass and served him brook trout with the head still attached. But Hughes calmly ate his food and washed it down with the tainted water while standing up to Brewster, waiting until he was in private to fight off a nervous breakdown.

The movie ends in 1947, when Hughes finally got his project, the Spruce Goose, literally off the ground (or the water in this case, seeing as how the Goose was a "flying boat" made mostly of laminated birch). After this personal triumph, Hughes is shown muttering "It's the way of the future" over and over again, foretelling his ultimate demise into mental illness and drug abuse.

So while the movie's political overtones appear to cast a favorable light on Hughes, liberal critics argued the movie glosses over his hard-core political activity, in which, needless to say, money played a huge role.

Hughes would ultimately exert political revenge on Brewster, persuading Frederick G. Payne, then-governor of Maine, to challenge Brewster for the Republican senatorial nomination. Armed with Hughes' unlimited financial backing, Payne defeated Brewster in the primary.

Depicting such events would have also highlighted Hughes' fervent anti-communism. Brewster, a good friend of Joseph McCarthy's, had an equal dislike for communism. But with Hughes' financial backing, Payne was able to turn the tables on him and portray him as soft on communism.

Needless to say, the movie stopped short of Hughes' shady dealings with the CIA and his relationship with Richard Nixon, with whom Hughes had questionable financial dealings on more than one occasion. In fact, the night of the Oscar ceremonies, "60 Minutes" ran a piece theorizing that a Hughes contribution had a direct connection to the Watergate break-in.

Aside from political messages, or lack thereof, *The Aviator* is, for the most part, fast-paced and exciting. Scorsese goes to great lengths to capture Hollywood's golden era, with such notables as Louis B. Mayer, Errol Flynn, Jean Harlow, and Ava Gardner wandering in and out. CJ

Sam Hieb is a contributing editor of Carolina Journal.

Book Review

Medved's *Right Turns*: Salvation of a Life Marred by Liberalism

• Michael Medved: *Right Turns: Unconventional Lessons from a Controversial Life*; Crown Forum, New York; 435 pp.

By SAM HIEB
Contributing Editor

Michael Medved describes himself as a "cornucopia of contradictions." He's a movie critic and former screenwriter who denounces "Hollyweird"; he's a conservative radio talk-show host based in the liberal mecca of Seattle; he's a veteran TV host who declines to own a TV himself; he's a Jewish nationalist who has most closely worked in career and political endeavors with evangelical Christians and traditionalist Catholics; he's an outspoken advocate of marriage who endured a divorce before finding everlasting love and starting a family with his second wife.

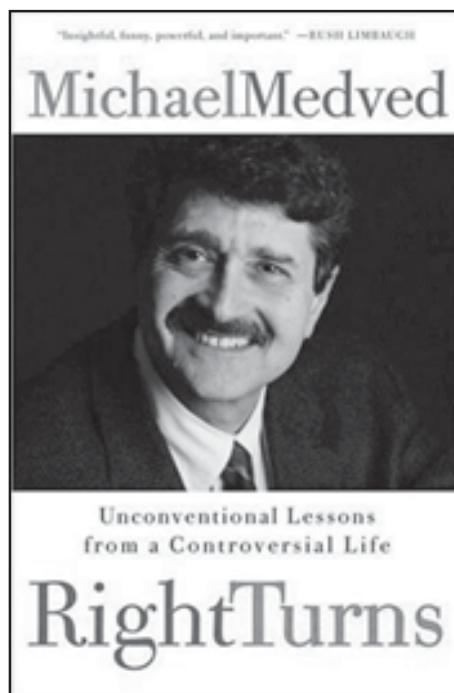
That Medved has made his career as an outspoken conservative is the greatest contradiction of all, considering the fact he was once a liberal activist and outspoken critic of the Vietnam War. He reconciles these contradictions in his new book *Right Turns: Unconventional Lessons from a Controversial Life*. Looking back on his controversial and highly connected life, Medved concludes, "the turns I have taken aren't just right, they're Right."

Those who listen to his syndicated radio show know Medved has a sense of humor and a quick wit, and it shows through in his writing. His description of an interview for a faculty position at the University of Wisconsin, Stout is hilarious, as is insight into the life of a big-time movie critic and host of "Sneak Previews," where he faces "the indignities and discomforts encountered by almost everyone who appears regularly on TV."

After spending the bulk of his teenage years in California, where his father worked as a defense contractor, Medved left for Yale, where he simultaneously embraced and rejected on-campus life. But he became involved politically. The Yale student body at the time was a who's who of future political figures: George W. Bush, Howard Dean, Joe Lieberman, and "JFK"—John F. Kerry—who made quite an impression on Medved.

He finished up his time in New Haven by leading an effort to ban ROTC on the Yale campus and worked as head speechwriter for a liberal Senatorial candidate. He enrolled in Yale Law School, where he became friends with a fellow student named Hillary Rodham. While he was turned off by Kerry's pretentiousness, he found Rodham to be genuine and down-to-earth.

Then one day he encountered her new boyfriend, a guy from Arkansas



named Bill Clinton who, like Kerry, made a lasting impression.

"I hated to see that," Medved writes, "because I couldn't shake my stubborn conviction that my pal Hillary—with her unpretentious kindness, innate class, and decency—deserved better than the slippery manipulations of the Arkansas Traveler."

With no real lawyerly ambitions, Medved dropped out of law school and moved back to California.

A bestselling book, *Whatever Happened to the Class of '65?* put Medved on the national scene. NBC produced a short-lived TV version of "Class," which aroused the interest of Hollywood agents in Medved's scriptwriting talents, though he'd never written a screenplay in his life.

Though his efforts were ultimately frustrating, his exposure to the shallow liberalism of Hollywood celebrities and executives was another major factor in Medved's conservative conversion. Through his Jewish faith, he developed a friendship with Barbra Streisand, who invited him to give a talk to a group of her Hollywood friends about his forthcoming book *The Shadow Presidents*, a history of presidential top aides.

Through his research, Medved gained considerable respect for men such as Bob Haldeman and Dick Cheney, who served as top aides to Presidents Richard Nixon and Gerald Ford, respectively. But for the purposes of this event, he tried to focus on the deeper, less-partisan history of his subject, such as the fact that FDR shared adjacent bedrooms with his chief aide Harry Hopkins, while Eleanor Roosevelt slept down the hall.

Another book, *The Fifty Worst Films of All Time*, cemented his credentials as a movie critic and eventually led to his long-running gig as cohost of "Sneak

Previews." As his stature as a movie critic grew, Medved took the film industry head-on, saying Hollywood has lost touch with America. Of course, he points to the large number of R-rated movies filled with sex and violence as indication of that cultural divide.

But he frames his argument not so much in the context of the damage to the national psyche these movies do; his argument is the movie industry simply isn't giving the public what they want. Directors keep turning out R-rated pictures in an effort to be "taken seriously" within the industry.

Medved never suggests "that an R rating ruled out a film's success; I simply argued that this designation made profitability less likely and that Hollywood's continual determination to saturate the market with adult material made no practical sense."

As for conservative talk radio, Medved sees it as a "source of hope rather than hatred." He debunks the theory among many liberals that the majority of people who listen to talk radio "sport missing teeth and permanent brain damage, along with gun racks and Confed-

erate flag decals attached to their mud-splattered pickup trucks."

He cites an American Enterprise survey that found Americans who listen to talk radio are far more likely to hold a college degree and earn a better income.

His talk show, aptly named "The Michael Medved Show," has been nationally syndicated since 1998 and is in nearly 140 affiliates nationwide. The difference between Medved's show and, say, Rush Limbaugh's show, is it invites opposition to actively debate the issues.

"Republican and conservative guests face a much tougher time getting on our show because agreement and mutual admiration can quickly become boring," Medved writes.

So while many of Medved's admirers are more likely to purchase this book, there's no reason why those of a more liberal mindset wouldn't enjoy, and learn from, the unconventional lessons from his controversial life. CJ

Sam Hieb is a contributing editor who lives in Greensboro.

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Short Takes on Culture

Home Alone: Parents Needed

• Mary Eberstadt: *Home Alone America: The Hidden Toll of Day Care, Behavioral Drugs, and Other Parent Substitutes*; Sentinel Press; 2004; 218 pp.

By KAREN PALASEK

Contributing Editor

RALEIGH
How much do children need the authority figures of a mother and a father? That's one focus of *Home Alone America*. Author Mary Eberstadt reveals her take on the central role of parents in *Home Alone's* subtitle: *The Hidden Toll of Day Care, Behavioral Drugs, and Other Parent Substitutes*.

The absence of parents in the home — mothers after school, and fathers on a full-time, live-in basis — has led to what Eberstadt describes as the "parent-free home." In years past, kids received attention and supervision after school from stay-home moms. More frequently, children are now left to spend long after-school hours alone and unsupervised, or in the care of a parent substitute.

In many households both parents work, and provide little personal guidance or supervision of their children. Children in single-parent homes, in particular, often fend for themselves after school if they are not in after-school care. Children in self-care after school is a particularly prevalent situation in single-parent homes, because there is no partner to share the child-care job.

The parent-free family structure also means that mothers no longer monitor after-school diets, "prevent sexual activity or delinquency by her mere presence," or "provide a basic emotional safety net," the author says. The other half of the family equation, the father, is often missing entirely. Fathers may be absent because they are unmarried, or divorced, and do not necessarily arrange their lives to live near their children. Tellingly, pop-culture figures echo a theme of abandonment and fatherlessness, subjects that resonate very strongly with young audiences.

"Too many children feel like they are just another chore to be outsourced," or left with the television and Internet as "babysitters," Eberstadt says. The result, she says, is predictable: kids with the time and the opportunity to get into trouble.

It's no surprise that kids who can't get attention any other way are more apt to misbehave, criminally or otherwise, a factor in the widespread use of behavior-controlling drugs for children.

What is the solution to better child behavior, less delinquency and recreational drug use, and the mindlessness or danger of Internet and TV "babysitters"? Restore parents to the home, after school and at other times, Eberstadt says. More urgently, restore the father as a stable presence in an intact family.

Tides of Consent: Bring It On

• James A. Stimson: *Tides of Consent: How Public Opinion Shapes American Politics*; Cambridge University Press; 2004; 180 pp; \$55 hardcover.

By JENNA ASHLEY ROBINSON

Contributing Editor

RALEIGH
James Stimson's *Tides of Consent: How Public Opinion Shapes American Politics* confirms what we've suspected all along. Our political opinions don't count. Not individually, at least.

Using data from 1952 to the present, Stimson shows that public opinion rarely matters in a democracy. What really matters, Stimson asserts, is mass change in public opinion. For the most part, the public has preferences, but rarely cares enough to act on them.

Slow change in public opinion, coupled with shocks of social or economic upheaval, explain the waxing and waning of political parties, the outcome of elections, and what Stimson calls the political "mood" of the country. Stimson explains how shocks to the political system, such as Watergate and Sept. 11, irrevocably change the currents that make up American public opinion.

Public opinion cannot be looked at as a snapshot — it must be measured dynamically to reveal the currents that carry American politics.

Tides of Consent, unlike other books by and for political scientists, escapes the temptation to rely solely on statistics. Stimson uses simple language, engaging examples, and sound logic to masterfully explain the ebbs and flows of American public opinion, elections, and politics. CJ

Too many kids think they are just another chore to be outsourced or left with the TV and Internet as babysitters.

Book Review

Spice Offers Unique History Of A Fateful Temptation

• Jack Turner: *Spice: The History of a Temptation*; New York; Alfred A. Knopf; 2004; 352 pages.

By JOHN HOOD

President

RALEIGH
Those who know me know that I am inclined toward spicy food. When at the sub shop, I order the spiciest deli meats and plenty of jalapenos. At the Chinese buffet, I'm not at all chicken about kung pao. I have been known to cook my own Indian food and mash up my own garum masala. I enjoy various pickled and barbecued foodstuffs. I fear no wasabi.

I must admit that I've never burned with curiosity to discover the birthplace of cinnamon, the derivation of "cloves," or the aphrodisiacal applications of pepper oils. For me, spices have held an instrumental interest only. They have made things taste good. Until now, that is.

Almost by accident, I ordered a copy of Jack Turner's recent work *Spice: The History of a Temptation*. I'm glad I did. A former Rhodes Scholar and McArthur Foundation Research Fellow, Turner is a young author with broad interests and the valuable ability to make a seemingly limited subject into a fascinating, wide-ranging discussion of economics, history, theology, politics, warfare, and other subjects.

The exotic realm of spices

The history of spices, you see, is far more than a journey into the culinary arts. The rarest and most valuable of spices in the Mediterranean World — cloves, nutmeg, cinnamon, ginger, and black pepper — all originated in far-away lands.

For example, cloves (the word comes the Latin *clavus*, or "nail," referring to their shape) came from just five little volcanic islands in the easternmost extremity of what is now Indonesia. They are the dried, unripe flower bud of an evergreen tree native only to that Northern Moluccas archipelago. Similarly, the nearby South Moluccas, con-

sisting of just 17 square miles of forested islands, was the only source for nutmeg, which is the core of an apricot-like fruit. And cinnamon is the sun-dried inner bark of an evergreen tree native to western Sri Lanka.

Still, these spices were known not just to the classical Greek and Roman world but also to far more ancient civilizations of Egypt and Mesopotamia.

They were used to flavor meals, burned as offerings to the gods, swallowed or smeared to induce passionate embraces, and used to embalm the deceased in sacred ceremonies. How did these ancient consumers, often but not always the wealthy, come to obtain so much of these spices that they became a part of everyday life? Living thousands of years before seaworthy caravels and gal-

leons, centuries before any large-scale empires could "guarantee" the safety of caravans (for a fee, naturally), ancient Egyptians and Mesopotamians acquired and enjoyed goods that originated half a world away, on hard-to-reach islands whose precise location remained mysterious even into the 16th and 17th centuries.

The answer, of course, is that venturing forth to seek out new things to consume and enjoy is a natural human impulse. As a result, trade is a natural human behavior. There

was a world-spanning market for spices long before anyone knew it. No central authority needed to "create" this industry. No government gave it an economic-development grant. It was a market that arose spontaneously as islanders traded their wares for the goods of mainland India and Southeast Asia, who in turn traded the spices to sailors traversing the Indian Ocean and to caravans traversing the Silk Road from China and Central Asia to the Middle East and Europe.

Silk may have lent its name to the trade route. But as Turner ably demonstrates, spices deserve their own hallowed place in the economics and the history of trade. Even the word *specie*, often used to refer to money, is derived from the word *spice*. The book is worth a little *specie*, trust me. CJ



Even the word specie, often used to refer to money, is derived from the word spice. The book is worth a little specie, trust me.

Book Review

The Case Against Lawyers: Regulations Destroy Liberty, Crier Says

• Catherine Crier: *The Case Against Lawyers*; Broadway Books; 244 pp; \$23.95

By **BOB SMITH**

Contributing Editor

WILMINGTON

After years of experience in law, Catherine Crier discovered liberty's shining sword hacks away at our freedom. Crier has concluded Alexis de Tocqueville's prediction that our "immense power," is stupefying us to "nothing better than a flock of timid and industrious sheep."

Crier is passionate in her criticism of our legal system and she has ample evidence to support her case. An insider, she's been a district attorney, a practicing lawyer, and a judge. Currently she hosts "Catherine Crier Live on Court TV." Crier condemns our laws for being unknown, unfair, unreasonable, and unworkable.

Among her other charges: The law goes beyond compensation for legitimate injury, compensating for "feelings;" the law enriches lawyers working on contingency fees; the law is used as a political tool. Crier rejects the war

on drugs and the death penalty as unworkable, failed legal efforts.

The author has helped to chronicle growing evidence that our judiciary now pre-empts the legislative in setting public policy. Unelected judges legislate from their benches, she says, and worse, we let them get away with it.

Crier doesn't let citizens off the hook. We have become obsessed with regulating ourselves, she says. Businesses exhibit paranoia for fear of litigation. Crier cites many wacky warning labels. Her favorite, on a baby stroller: "Remove child before folding." And litigation is costing us a fortune. The \$246 billion tobacco suits by states, Crier says, is the "largest redistribution of wealth to the smallest number of people in the history of the world."

Draining the economy

Lawyers are draining our economy, Crier says. Fifteen years ago an economist figured we had 60 percent too many lawyers. Every one of them over his optimal number reduced our GDP by \$2.5 million, Crier says.

Crier cites a host of absurd liability cases. In the exploding "rights" business, "Congress has tried to please just about everyone," she says. She believes the ultimate winners, as rights become entitlements, are lawyers and government.

Free speech is jeopardized, especially on college campuses. "Workplace rights" have caused unprecedented assaults on businesses. "Bad work habits, slovenly appearance, even downright incompetence may no longer be just cause for dismissal," Crier says.

Government cash and rules burden the public education system, she says. Laws to mainstream disabled children, and teaching to "the lowest common denominator," (to avoid loss of self-esteem) carry this social service to ridiculous extreme. For example, a court in Georgia ruled that a multi-handicapped child must be sent to a special school in Japan — at the expense of the local school district.

Crier exposes the threats to our freedom from regulatory agencies. More insidious than law, regulations can be implemented without voter oversight,

Crier says.

Bureaucracies have become "an independent source of power." Legislators and lobbyists hide behind the obscurity of government regulators.

Crier writes about "the perception of rampant crime;" the "war on drugs;" "the toxic politics of money;" lobbyists; and "the trouble with lawyers" (who don't care who wins or loses; they make money either way).

Crier takes a stab at some solutions. On civil litigation: "Our laws should not compensate every foolish or tragic event if a plaintiff wasn't necessarily at fault." On regulatory law: "Congress must be willing to examine the overall achievement of an agency." Criminal laws? Crier thinks we should not lock up pot smokers; we should abandon minimum sentences; eliminate the death penalty; and she's horrified by the thought of a juvenile serving life in prison.

On "political lawmaking" Crier has a lot to say. She thinks we should demand that legislators "give a full accounting of the costs, the effects, and of whether the legislation can accomplish the intended goal." *CJ*

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Salisbury	WSTP	AM 1490	Saturdays 11am
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Commentary

So Long, Liberal Journalists

There's a song on "Freak Out," the 1966 Frank Zappa and the Mothers of Invention album, called *You're Probably Wondering Why I'm Here*. That tune ran through my mind as I thought about what to say to readers in my first column as a staffer for the John Locke Foundation.

So, why am I here? Certainly, being ushered out the door with other senior management of *The Herald-Sun* in Durham a half-hour after the paper was bought by the Paxton Media Group on Jan. 3 had something to do with it. But my move away from the mainstream media, or MSM as bloggers like to call it, began long before January.

My journey from lefty liberal reporter-editor to conservative critic of the MSM began in the early '90s, when three trips to the Soviet Union and Russia opened my eyes to the evils of a command economy. Later, the hysterical reaction of the media to the 1994 Republican "takeover" of Congress made me view my profession in a profoundly different way.

That intemperate media reaction and the daily demagogic press briefings of Democratic Reps. Richard Gephardt and David Bonior, then the minority leader and minority whip, respectively, caused me to ask a simple question: Why did these people think the world was coming to an end simply because one of our major national political parties had triumphed to control Congress for the first time in 40 years? Their reaction seemed unhealthy and even dangerous to me.

I began to see the media — and the world — in a different way. I became what the Center for the Study of Popular Culture's David Horowitz calls a Second Thinker. The scales had fallen from my eyes. Suddenly I could see the bias and agenda-pushing that before had escaped me. But what was now so obvious to me and much of the American public was not so obvious to most of my media colleagues. Most MSM types are like fish that don't know they're wet. They don't see it at all, and they look at you blankly when to try to explain the concept of "dry."

Over the last 10 years I fought the head-butting battle against bias in

journalism in general (on the occasional panel at a university or a press gathering) and at my newspaper in particular.

At *The Herald-Sun* we decided we would no longer identify groups or individuals as "conservative" while leaving leftists and liberal groups undescribed. We began calling *The Associated Press* in New York and demanding corrections whenever we saw an obviously biased story (a quite frequent occurrence, by the way). We

monitored our own stories for bias, not only in wording, but in the initial story choices by editors.

We asked why local anti-abortion or public prayer events went uncovered while pro-choice and other liberal-left events were always on the calendar for coverage. "They never call us," my editors would say. It

didn't occur to them that they didn't call because they were habitually ignored in the past. We put an end to that.

During this period I became increasingly disenchanted with the profession I had entered so enthusiastically in 1972. Daily newspaper journalism as practiced 30 years ago is not the same as practiced today, and that's not a good thing. I no longer wanted to be part of a profession that had

abandoned long-held journalistic standards and practices in favor of the dubious tenets of victimology and political correctness.

For several years I had been contemplating a change. I no longer

respected the MSM and was uncomfortable being a part of it. So, if you're wondering why a person who actually listened to the Mothers of Invention in the '60s is here writing this column, that's why.

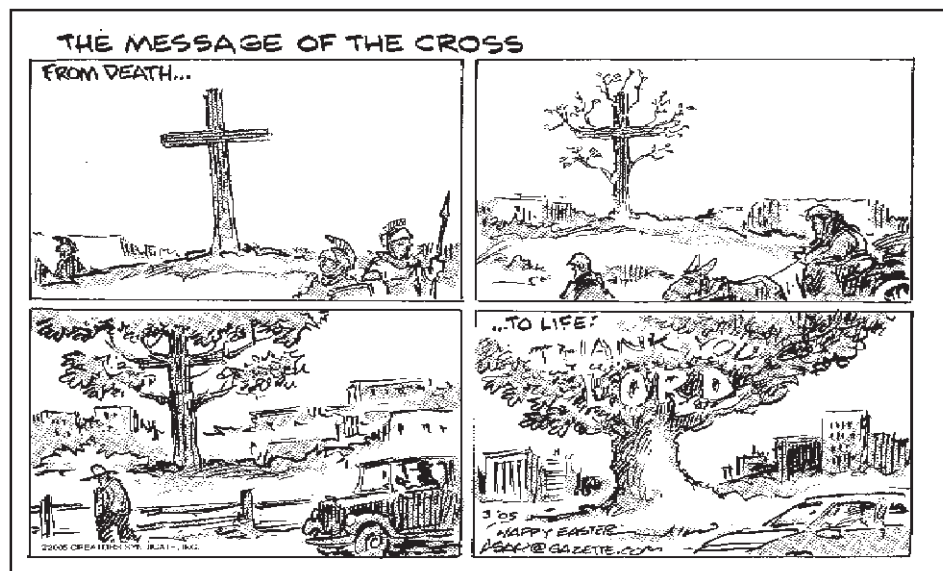
In this new and liberating role I look forward to doing whatever I can to help spread an understanding of limited government, free markets, and individual freedom, concepts that mainstream journalism not only doesn't value but doesn't seem to understand. CJ

Jon Ham is vice president for communications for the John Locke Foundation and publisher of *Carolina Journal*.



Jon Ham

I no longer wanted to be part of a profession that had abandoned long-held journalistic standards and practices...



Editorials

POLITICS OR PATRIOTISM?

Illegal immigration, arrests at N.C. airport endanger nation

All North Carolinians should be concerned about the arrests of 27 airplane mechanics and repair workers March 7 at Piedmont Triad International Airport at Greensboro. The arrests on immigration charges made a joke of federal efforts to tighten the nation's security against terrorists.

All of the illegals possessed fake documents, including North Carolina driver's licenses.

Most Americans don't think the arrests are a laughing matter. Part of the joke was on the N.C. Division of Motor Vehicles, Gov. Mike Easley, and legislators — who continually refuse to tighten the requirements for the issuance of state driver's licenses. At this late stage of the war on terrorism, their refusals can only be construed as rooted in complicity — ostensibly for the sake of political correctness or political pandering — or in gross negligence.

The workers either worked for TIMCO or were clients of a labor broker who supplies the aircraft maintenance company. Incredibly, they worked in supposedly secure parts of the airport where a terrorist strike could be carried out. They came to America from Chile, Laos, Mexico, Peru, the Philippines, Sudan, Venezuela, and Zimbabwe.

Authorities said none of the immigrants was a terrorist. Is that statement supposed to make us feel safer? The point is, it would have been simple enough for any terrorist to have slipped among the workers' ranks and sabotaged or hijacked a passenger jet.

Seven of the 19 hijackers involved in the Sept. 11, 2001 terrorists attacks on the World Trade Center and the Pentagon had fraudulently obtained driver's licenses in Virginia. North Carolina's

lax licensing law makes the state a haven for illegal immigrants and poses a threat to the nation.

Now a new study comes along, by the Pew Hispanic Center, that says North Carolina's illegal immigration population grew to an alarming 300,000 in 2004. That gives the state the eighth-largest population of undocumented immigrants in the nation, the study says. The increase of 43 percent from 2000 to 2004 was nearly twice the rate of the nation as a whole, the study says.

Wayne Hurder, director of driver's license certification at NCDMV, agrees with Latino activists who say the state would only worsen the problem if it cracked down on illegal immigrants.

The illegals would be more of a hazard, Hurder said, because they would drive without being licensed.

Hurder's line of reasoning would make even Daffy Duck scratch his head. Why should anyone

bother to apply for a driver's license if DMV officials feel that way? Anyone could drive without a license and worry not a second that he would be caught. Why should North Carolina bother to enforce any of its laws?

Supposedly President Bush and Mexican President Vicente Fox are working on federal measures to stem the flow of illegal immigrants.

In North Carolina, three bills that would prevent illegal immigrants from getting driver's licenses had been filed in the General Assembly as early as January and as late as March 3. All three lie dormant in committees.

What will it take before North Carolina officials break the logjam and do something about illegal immigration? Or will it be too late?

What will it take before North Carolina officials break the logjam and do something about illegal immigration?

MEDICAID: AT LEAST FOLLOW

N.C. continues to spend, other states find innovations

North Carolina's political class likes to fancy itself as ahead of the curve. In reality, we follow far more than we lead.

While other states are pursuing innovative approaches to a variety of issues — higher-education finance, parental choice in education, competition in government services, etc. — Raleigh is the place where folks equate spending money with improving education, and where an escalating tax burden is called “fiscal discipline.”

And unlike state capitals across the country, Raleigh is apparently not the place where governors and legislators are talking about how best to change the fundamental structure of Medicaid, the joint federal-state program providing medical services to the poor, disabled, and elderly. It's becoming increasingly obvious that the program is unsustainable in its current form, which gives patients few incentives to consume care wisely, encourages long-term dependency on the welfare state, and allows many middle-income Americans to hide or shield their assets and qualify for tax-funded nursing-home care.

“Medicaid is the monster in the middle of the road, and it's threatening the viability of every state in the union,” said Republican Gov. Robert Taft of Ohio.

Among the governors pushing for fundamental reforms are Democrats Mark Warner of Virginia and Phil Bredeson of Tennessee and Republicans such as Mike Huckabee of Arkansas and Arnold Schwarzenegger of California.

Here in North Carolina the biggest issue in Medicaid policy this year appears to be whether to phase out the counties' 6 percent share of the cost, which would transfer hundreds of millions of dollars from local budgets to the state budget. We happen to favor the idea — Medicaid should be financed with consumption taxes, not property taxes — but it is scarcely the highest-priority issue to address.

As previous research papers have amply demonstrated, North Carolina's Medicaid costs are way out of line with those in comparable states (which are themselves struggling to pay their escalating bills). If we put the same resources into Medicaid that states such as Virginia and Georgia do, our state budget would be \$630 million to \$800 million smaller — which is about how much Easley's proposed 2005-07 budget relies on higher taxes.

Of course, such adjustments could not realistically be made in a single year. Our position is not that restructuring Medicaid could by itself erase the state budget deficit, but getting started on it would help a lot.

What should be done? We should eliminate most optional services, reduce our fee structure to the regional average, tighten eligibility, enforce asset recovery rules, and use capitation and savings accounts to move Medicaid closer to a private-sector model for health care. Other states are moving in the right direction. North Carolina won't be a leader here, either, but at least we should have sense enough to follow.

GEORGIA ON OUR MINDS

What's going on? A revolutionary flat tax; N.C. falters

What can Georgia do that North Carolina can't seem to pull off?

No, this isn't an NCAA reference. I'm not even talking about the state of Georgia. I'm referring to the Republic of Georgia, the former Soviet possession now free and independent — and operating its government under a flat tax.

According to a new report in the *Christian Science Monitor*, there are nine Eastern European countries that have adopted flat-rate income taxes, including Romania and Georgia during the past year. But North Carolina, demonstrating once again its tendency to follow rather than lead in public-policy matters, added a fourth tax bracket (of 8.25 percent) back in 2001 and under Gov. Mike Easley's proposed budget will retain the bracket for 2006 (at 8 percent), then revert to a bad-enough set of three brackets: 6 percent, 7 percent, and 7.75 percent. There are many dif-

ferent reasons to embrace a single marginal rate of taxation. There are also many different misguided reasons why some oppose the flat-rate tax.

For example, some argue that imposing a single tax rate is “regressive.” That is an abuse of the term. In tax-policy parlance, a regressive tax is one in which the average tax rate — the percentage of income paid to the government — falls as one's income rises.

A progressive tax imposes a higher average tax rate as one's income rises.

So, is a flat tax “fair”? Depends on your definition of the term. If you think that someone who earns twice your income ought to pay around twice the taxes, then the flat tax is for you.

If you think as Karl Marx did that it's “fair” to use taxes to redistribute wealth, don't be surprised if those who have personal experience with Marxism reject your view. Even Russia now has a flat tax. But not yet North Carolina. *cj*

Commentary

Draw Bright Lines in State Government

The 6th century Greek philosopher Heraclitus had a tremendous influence on the course of Western civilization. But his name is hardly a household word, unlike that of Socrates or Aristotle, because the writings of Heraclitus survive only as fragments, not as full texts that can be scrutinized by scholars and inflicted on students.

What makes Heraclitus important? And what does he have to do with my usual topic of North Carolina public policy?

Plenty. Heraclitus was a philosopher of change. Like the Taoists of ancient China and the quantum theorists of modern science, Heraclitus viewed all reality as constantly in a state of flux. He famously observed that you can't step twice in the same river, because it is always flowing. The water you touch the first time won't be around the second. And flowing water constantly changes the shape of the river, and the banks that contain it.

To recognize nature's slipperiness is not to suggest that we can't clearly distinguish one thing from another, right from wrong, truth from falsehood. Indeed, once we accept the idea that the world is complex and blurry, it becomes even more important to cling to the certainties we can find, and to draw as many bright lines as possible to protect ourselves from error or temptation.

Firm legal and ethical rules are required because good intentions are insufficient. Temptations are, well, tempting. You might know theoretically that you are overweight. But without a commitment to following a diet, it is very easy to rationalize eating a hamburger today. It's not that you don't want to be thinner. It's that, at that moment, it doesn't seem to matter much if you have one burger. Of course, it doesn't tend to happen just once. To paraphrase Popeye's pal Wimpy, you will certainly pay dearly on Tuesday for that hamburger today — and tomorrow, and the next.

North Carolina state government has a similar problem, though it typically involves steak rather than burgers. The problem is that lobbyists can spend unlimited sums winning and dining legislators or executive-branch officials, taking them on golf outings or weekend getaways, or handing them hard-to-score tickets to ACC games — and not a penny

of these expenditures must be disclosed.

It's called “goodwill-lobbying.” Its practical effect is that North Carolinians have only the barest inkling of what is being spent to shape the outcome of administrative decisions or legislation.

Heraclitus had another relevant saying: “the people should fight for

the law as for their city wall.” Clearly understood laws and their vigorous, impartial enforcement are no less-important ways to protect us than are physical defenses. Also, city walls serve as lines of demarcation. They help us recognize important boundaries.

Similarly, tighter laws about lobbying would serve not only to

police the more obvious (and probably rare) instances of out-and-out bribery but also to help lobbyists and lawmakers identify and respect important boundaries, thus protecting themselves from compromising situations.

Lobbying is an indispensable function. Our rights to speak, publish, assemble, and petition our government — or to hire others to do these things for us — are fundamental to personal liberty.

But they don't extend to the right to influence public officials with expensive meals, gifts, or trips. The North Carolina Coalition for Lobbying Reform (www.nclobbyreform.org), of which I am a member, is seeking legislation that would require all such expenditures to be reported to the public. It would also restrict the value of gifts and require a “cooling-off period” before former lawmakers or officials could lobby their former colleagues.

A call for clearer rules need not be construed as a slight on the intentions or intelligence of lobbyists and public officials. As Heraclitus also wrote, an “abundance of knowledge does not teach men to be wise.” If we could accurately judge every situation and always make the right spur-of-the-moment decision, we wouldn't need laws or ethics.

But human nature bars such perfect judgment — and that's one thing that isn't going to change. So the law must. *cj*



John Hood

John Hood is president of the John Locke foundation.

Editorial Briefs

Growing gray globally

A surge of graying baby boomers is putting pressure on governments around the world to reform their old-age pension systems, writes Pete Engardio and Carol Matlack of *BusinessWeek* magazine. In 2003, for instance, the French government responded to the growing financial burden of supporting the elderly by enacting new rules requiring people to work longer to qualify for retirement benefits. Other European nations, Brazil, and Japan have proposed similar changes, despite massive political pressure and citizen protests.

But the demographic realities facing nations around the world have gotten to the point where dealing with them has become a priority regardless of their political costs. Worldwide, the ranks of 60-year-olds and older are growing at 1.9 percent per year, 60 percent faster than the overall population.

In 1950, there were 12 people ages 15 to 64 to support each one of retirement age; today, the global average is 9. By 2025, the number of people ages 15 to 64 will fall by 10.4 percent in Spain, 10.7 percent in Germany, 14.8 percent in Italy, and 15.7 percent in Japan.

If countries can't maintain the size of their labor forces, they will need to increase productivity to maintain current growth levels. This might be difficult for Europe, where productivity gains have averaged 1.3 percent a year since 1995.

The United States, with its slightly higher fertility rate and high levels of immigration, is in a more favorable position, say Engardio and Matlack. Median age in the U.S. is expected to rise by only three years to 39 over the next 25 years.

Private conservation efforts better

Conservation of natural resources is better left to the private sector, according to a report published by the Reason Foundation. Michael DeAlessi, director of Natural Resources Policy, argues that federal oversight of environmental protection is ineffective:

- Federal regulations are more process-oriented than results-oriented; for example, the Endangered Species Act has recovered only 10 of 1,300 species over its 30-year life span.
- Public ownership of land, such as national parks, provides little incentive for individuals to care for it; indeed, one-third of American land is owned by the federal government, but much of it is deteriorating.
- Special-interest groups influence the policy-making process in order to create gains for themselves, often at the expense of other groups.

However, private initiatives make all groups better off. When property rights are well-defined, individuals are more likely to care for resources for a future return on their investment.

Ducks Unlimited, a private organization founded by California sportsmen in 1937, works to restore and improve wetlands to ensure continued populations of waterfowl for future hunting.

The Louisiana chapter of the Audubon Society earned almost \$1 million in the early 1980s by allowing oil and gas development on Rainey Sanctuary, a 26,000-acre nature preserve owned by society.

Private initiatives show that economic development and habitat preservation can peacefully coexist, DeAlessi said. *CJ*



What's Driving Health-Care Spending?

By MICHAEL L. WALDEN

Contributing Editor

Are we spending too much on health care? Most people, especially patients in the health-care system, would answer yes. Many factors are cited as being behind the high spending, including waste, government programs, high profits earned by some providers, and an aging population.

Recent spending on health care has risen faster than other spending and faster than consumer income. Yet it's important to realize that any spending amount is a product of the price per unit and the number of units consumed.

Half of the recent increase in health-care spending is caused by more units of health care being consumed, or in simple terms, greater usage of health care.

Three factors drive the increased consumption, or use, of health care: our aging population, our desire to be healthier as we are becoming more affluent, and the way in which health care is financed (more on this last point later).

The other half of the rise in health-care spending is caused by higher prices—that is, the price per unit of health care consumed. Indeed, health-care prices have risen two-thirds faster than other prices in the last decade.

Yet there's debate about whether increases in health-care prices are being properly measured. When we think of a price increase, most of us think of paying more for the same thing. However, health care is different because it contains an important quality component, and few would disagree that the quality of health care has improved enormously. Our health-care system can treat many more illnesses, diseases, and injuries with greater effectiveness than any time in the past.

So, part of the reason health-care prices are up is because we're getting more for our money. Some economists argue that when "quality-adjusted" health-care prices are calculated, they show no increase.

Nevertheless, if we want to slow future increases in health-care spending and prices, what can be done? Economists always focus on the two sides of any market: demand and supply. To hold down price jumps, we'd want to slow the increase in demand while speeding up increases in supply.

On the demand side, a major issue is how consumers pay for health care. Consumers pay little of the direct cost of health care. Instead, they pay indirectly

through government and insurance payments.

Some think that if consumers paid more of the direct price tag for health care, they'd be more motivated to compare prices and evaluate treatments. In short, consumers would become more price-sensitive at the time health-care decisions are made. In turn, this would motivate providers to be more efficient and to eliminate wasteful spending.

This is exactly the motivation behind health savings accounts. In such accounts, consumers are covered for catastrophic illnesses and injuries. But smaller expenditures are paid out of a deductible. To prompt consumers to monitor, and perhaps prevent, these small expenditures, unused funds in the deductible go into a savings account for the consumer.

Critics of this demand-side approach question whether consumers are capable of making health-treatment decisions, and worry that any incentive for consumers to reduce health-care expenditures could come at the expense of their own future well-being. So this debate gets to the heart of consumer sovereignty.

Attacking health-care costs from the supply side means reducing barriers and regulations to make it easier for the number and type of health-care providers to expand. Licensing and training requirements and "certificate of need" programs would all come under review with this plan.

A recent Federal Trade Commission study cited such supply restrictions as a major factor behind the increase in health-care prices.

Again, such supply-side proposals raise issues. If standards are relaxed, would the competency of health care providers suffer? Further, if more providers are allowed to enter the market, would lower prices come as a result of "cut-throat" competition and instability? Yet one response to such questions is, if it works in other markets, why not health care?

Although many claim health care is fundamentally different than other product markets, it still follows the laws of that "dismal science"—economics. Skyrocketing demand and restricted supply have led, by some measures, to rising prices. To reverse this trend, we need what any market would need: moderating demand and skyrocketing supply. *CJ*



Michael Walden

Michael Walden is a William Neal Reynolds distinguished professor at North Carolina State University and an adjunct scholar with the John Locke Foundation.

Threat of Terrorism Demands U.S. Control Borders

By MARC ROTTERMAN

Contributing Editor

Securing U.S. borders and enforcing the nation's immigration laws should be the federal government's No. 1 national-security priority.

There are an estimated 8 million to 10 million illegal aliens in the United States. About 1 million people a year receive permanent residency, and the Census Bureau estimates a net increase of 500,000 illegal immigrants annually. Since 1970, more than 30 million legal and illegal immigrants have settled in the United States, representing more than one-third of all the people ever to come to America's shores.

The level of immigration today is significantly higher than the historical average. Many attribute this unprecedented wave of immigration to the extraordinary broadening of U.S. immigration policy since 1965, statistics from the Center for Immigration Study's web site show.

Make no mistake about it, a majority of Americans opposes amnesty for illegals. They want illegal immigration halted, and they would prefer that illegals be sent home. They support a moratorium on immigration, and if necessary using U.S. troops to protect our borders.

President Bush has proposed giving illegals special working permits for three years and then he expects that these "temporary" workers will eventually go back to their native countries. But stop and ask yourself, what would be their incentive? Why would they leave voluntarily once they've received the blessings of America?

The Mexican Foreign Ministry has published a colorful new comic book that many immigration-control advocates think encourages illegal border crossings. The 32-page book, *Guide for the Mexican Migrant*,

offers safety information for border crossings, a primer on their legal rights, and advice on living unobtrusively in the United States. Dramatic drawings show illegals wading into water, running from the U.S. Border Patrol, and crossing near a hole in a border fence. It's not far fetched to think this "comic book" encourages illegal immigration and also shows the contempt that some Mexican officials have for U.S. laws.



Marc Rotterman

Since Sept. 11, numerous lawmakers in Washington D.C. have concluded that for national-security reasons alone the United States can no longer afford an "open borders" policy. Consider the written testimony to the Senate Intelligence Committee on Feb. 16 by Deputy Homeland Security Secretary James Loy.

"Recent information from ongoing investigations, detentions, and emerging threat streams strongly suggests that al Qaeda has considered using the Southwest border to infiltrate the United States," Loy said. "Several al Qaeda leaders believe operatives can pay their way into the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons."

Loy also mentioned the danger of infiltration through the extensive Canadian border. "Al Qaeda and affiliated elements currently have the capability to produce small amounts of crude biological weapons, and may have acquired small amounts of radioactive materials," he said.

FBI Director Robert Mueller also appeared before the Intelligence Committee. "Because of al Qaeda's directed efforts this year to infiltrate covert operatives into the U.S., I am also very concerned with the growing body of sensitive reporting that continues to show al Qaeda's clear intention to obtain and ultimately use some form of chemical, biological, radiological,

nuclear or high-energy explosives material in attacks against America," he said.

The Sept. 11 Commission's final report of July 22 pointed out immigration-related failures or problems that likely contributed to the attacks. As examples of missed opportunities the report notes that collectively the Sept. 11 hijackers:

- Included known al Qaeda operatives who could have been put on a watch list;
- Presented fraudulent passports;
- Presented passports with suspicious indicators of extremism;
- Made detectable false statements on visa applications;
- Made false statements to border officials to gain entry into the United States;
- Violated immigration laws while in the United States.

To correct these weaknesses the commission made several recommendations, including integrating the U.S. border security system into a larger network of screening points that includes the transportation system. The commission also recommended that the nation set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. The commission also recommended the establishment of a complete biometric screening system that would speed qualified travelers. The report stated that it is elemental to border security to know who is coming into the country. The report stresses that federal officials, working with Canada and Mexico as much as possible, must be able to monitor and respond to entrances through the nation's ports of entry.

Sept. 11 was a wakeup call for the United States. Business as usual is not an option. It is time to secure our borders.

CJ

Marc Rotterman is treasurer of the American Conservative Union and a senior fellow at the John Locke Foundation.

N.C. Should Consider 'Value-Added' Criteria for Teacher Quality

By KAREN PALASEK

Assistant Editor

Is National Board Certification for teachers worth the money and effort it requires? North Carolina is set to spend 59 percent of its total state budget on education in fiscal 2005-06, including an appropriation for the National Board for Professional Teaching Standards of \$3.3 million. In North Carolina's public schools, the NBPTS credential automatically confers "high quality teacher" status to the successful applicant. In addition to footing the \$2,300 fee for each application, the state allows eligible teachers three paid days of release time, and tops off their pay with a 12 percent salary differential for the 10-year life of the certificate.

A valid question is: What are we getting in return? State education officials and the Easley administration proudly advertise North Carolina's leadership in National Board credentials. North Carolina accounts for more than 8,280, or one-fifth, of the nation's National Board Certified teachers. Given the emphasis on board credentials in this state, the assumption is that certified teachers are precisely what is needed to close the gaps in our weakest students' performance. Unfortunately, data do not support this belief.

According to "Value-Added Assessment of Teacher Quality As an Alternative to the National

Board for Professional Teaching Standards: What Recent Studies Say" by G. Cunningham and J.E. Stone, the "teacher effect" on student achievement for NBPTS-certified teachers is about two percent higher, on average, than it is for non-NBPTS-certified teachers. That advantage is trivial relative to the achievement gap faced by the students who are most in need of good teaching. Even more disconcerting, given the time and expense of board recognition, is the fact that research revealed that more than 40 percent of student score gains for non-board certified teachers were above those for students of board-certified teachers.

A 2004 study of North Carolina's student achievement levels reported that 15 to 20 percent of North Carolina's third-grade students were performing at Level I, the lowest academic achievement level, in math and reading. Level I third-graders trailed grade-level (Level III) achievers by 16 points in reading and 22 points in math, according to the student test data. When compared, the difference in effectiveness of NBPTS teachers was 0.49 points per year in reading, and 0.46 points per year in math. If National Board certification is seen as a way to close early-achievement gaps, and prevent larger ones in later school years, it will not deliver anywhere near the annual achievement increments that are needed. As researchers G. Cunningham and J. Stone say, "decades would be required to close the achievement gap."

What these studies tell us is that NBPTS certifica-

tion, at least in itself, is not a proxy for a high-quality teacher. As a policy matter, it is also not a practical means of closing achievement gaps between grade-level peers.

An alternative means of identifying good teachers seems in order for North Carolina's schools, and the value-added assessment technique offers a number of practical, as well as financial advantages. Teachers identified as "high quality" under the Value-Added System would be selected according to the size of their students' annual achievement gains. This technique measures academic progress for each student, in each subject and year, and can identify the difference — or "value-added" — that each teacher contributes.

Selecting high-quality teachers using the top 10 percent of student gains, for example, means that a high-quality valued-added teacher would increase annual student performance by at least 13.55 points in reading, and 18.62 points in math (using the third-grade scores above).

Cost for a value-added assessment system has been about \$1 per student, and \$25 per teacher. Even with appropriate salary awards for value-added gains, this teacher effectiveness program would amount to a fraction of the state's current and ineffective NBPTS certification-incentive program. It also has the advantage of accuracy — the effectiveness of individual teachers can be identified instead of indiscriminately rewarded.

CJ

N.C. Excise Tax on Drugs: Unconstitutional or Genius?

By PAUL MESSINO
Editorial Intern

One way to reduce North Carolina's estimated \$1.5 billion budget deficit is to generate more revenue, while maintaining current spending levels.

While perusing the state Department of Revenue site (www.dor.state.nc.us), a reader can find a little-known revenue-generating item that begs to be exploited. Since 1990, North Carolina has used an excise tax for unauthorized substances. According to the DOR website, a taxable unauthorized substance is "any controlled substance (marijuana, cocaine, etc.), illicit spirituous liquor ("moonshine"), mash and illicit mixed beverages." In some twisted way, the state, by taxing an outlaw, is endorsing disobedience.

The Controlled Substance Excise Tax (GS, Ch.105, Art. 2D) walks a thin line between unconstitutionality and genius. It took some time for the legislation to become brilliant (before it was simply unconstitutional), but as with spirituous liquor, perfection takes time.

To avoid unconstitutionality, the substance of the law had to circumvent double jeopardy, a feature of the Fifth Amendment. Double jeopardy means that if a defendant was found innocent of one crime, he could be charged with the same crime again. In other words, if the punishment for not paying his unauthorized-substance tax were so punitive as to be considered a criminal offense, then, if he was found innocent of possessing an unauthorized substance (a criminal

offense), he could not be prosecuted for tax evasion of your unauthorized substance, or vice versa.

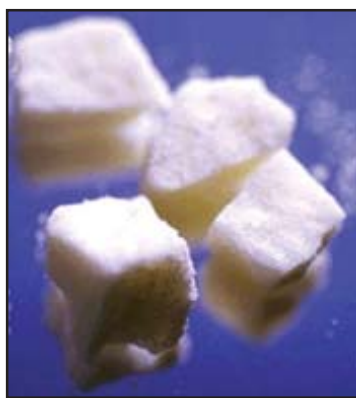
The U.S. Fourth Circuit Court of Appeals case, *Nivens v. Gilchrist* (2003), decided that North Carolina's tax was a civil offense, and not criminal. As it stands today, the penalty for not paying the unauthorized substance tax could equal 150 percent of the tax due.

Skeptics who doubt such a law exists can verify for themselves by calling the DOR helpline, 1-877-308-9103.

Now, let's examine the logistics behind it. Suppose, say, a drug dealer determines it's his patriotic duty to pay taxes on the proceeds of his civil disobedience. He's in luck; the law forbids the DOR from reporting him to criminal justice authorities. All he needs to do is go to the DOR office or apply via mail or fax, attention Denise Lanier. Payments are preferred by money order.

After paying, the dealer will receive a stamp via certified mail that authorizes his possession of an illegal substance.

Nevertheless, the burden is on the conscientious



Crack cocaine

drug dealer to set up a timetable for compliance. The state generously gives him 48 hours in which to report his illegal substance for taxation. Unfortunately, it takes a full two weeks to mail him the stamps. Even if our patriotic payer had a PDA to organize his imports and exports, compliance would be nearly unfeasible.

How many avail themselves of this service? According to DOR officials, only 77 people have fulfilled their civil unauthorized-substance tax obligation since 1990 — and most of them, the DOR told CNN last April, were likely philatelists adding the unique stamp to their collections.

In fact, the fewer people comply, the better off the state is. Over the course of 15 years, the state has acquired \$78.3 million through the law.

So how can we tweak this law to help the budget?

One way is to encourage more drug dealers to come to North Carolina, make compliance with the law more impossible by hiding the necessary forms within the bowels of the DOR, halve the 48 hours dealers are allowed to apply for and receive their stamps, and then ramp up enforcement. All revenue collected in this manner does not have to be earmarked, as is the current case; it could all be thrown into the General Fund.

Another option would be to raise the tax by 100 percent to 200 percent, then advertise the change and the tax in general, along with the philatelists' idea that the stamp itself has value. Emboss them. Suggest them as suitable Christmas or birthday gifts for your local dealing buddies. In each case, the state could be rolling up the dough.

CJ



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