

State Abandons Experiment With Privately Run Prisons

North Carolina resumes
operation of two prisons
after discrepancies found

By PAUL CHESSER
Associate Editor

RALEIGH

The biennial state budget signed June 30 by Gov. Mike Easley provided for the construction of three prisons in North Carolina. In addition, the General Assembly authorized the state to purchase what once was its only two significant private prisons from Correctional Properties Trust, the company that owns them.

The legislature has not allocated a dollar amount, but the budget provisions signaled that the state plans to get out of privatization and that it will operate prisons itself for the foreseeable future. Privatization has worked for hundreds of other governments at the local, state, and federal level, but North Carolina’s first experience soured state officials on the idea.

NC’s short privatization history

In 1995 the legislature edged toward prison privatization, allowing for the construction of two prisons at opposite ends of the state, in Avery and Pamlico counties. Then-Correction Secretary Franklin Freeman was less than enthusiastic about the idea. In an interview with *The News & Observer* of Raleigh he said he believed that the state is responsible for the incarceration of criminals and should remain accountable for it. He advocated for a slow, limited approach to privatization.

North Carolina awarded operations contracts for the two in-state prisons in July 1996 to U.S. Corrections Corp. In April 1998, before construction of the prisons was complete, USCC was acquired by Corrections Corporation of America, the nation’s largest outsourced corrections management company. CCA assumed the contracts with the state, which provided for a 10-year renewable facility lease and five-year renewable operations agreement.

CCA opened the prisons, the Mountain View Correctional Facility in Spruce Pine and the Pamlico Correctional Facility in Bayboro, in late 1998 to house more than 500 medium-security prisoners each.

Both projects represented the state’s first



Carolina Journal photo by Richard Wagner

Central Prison in Raleigh, like all other N.C. prisons, will continue to be operated by the state.

serious attempt to enlist private companies to manage its incarcerated criminals in state. It had previously contracted with private companies to house inmates out of state on a limited basis.

The experiment was short-lived: The Department of Correction assumed operating control of the prisons in October 2000. The original agreement had called for CCA to run the prisons until 2003.

CCA and the Correction Department ended the operating contract early because the prisons immediately encountered problems. Both prisons, according to a 1999 Correction internal audit, were found to be understaffed and the workers poorly trained. The review of Mountain View determined that funds and merchandise were missing, and that its first business manager destroyed 95 percent of its records before being fired. Neither of the prisons was able to fulfill contractual obligations that required the employment of 100 inmates on site by private companies. Correction officials also concluded that poor management and record keeping plagued both prisons.

Steve Owen, director of marketing and communications for CCA, said the original contract that USCC negotiated with the state was difficult for his company to fulfill. He said CCA originally bid against USCC for the rights to run the prisons, and that the financially strapped and smaller USCC wanted the contract badly.

“It was not [a contract] in which we

would have bid and agreed to,” Owen said. Correction officials also questioned the financial stability of CCA at the time, which completely overturned its management and board of directors in 2000. As a result, no one from CCA could speak knowledgeably to *Carolina Journal* about the company’s problems with the original contract.

Studies of privatized prisons

Comparative studies of public and private prisons are easy to find, and scholars supporting each side of the issue are equally plentiful. Reports by conservative or business organizations usually support privatization, and those sponsored by liberal groups or government agencies question the idea. One truth is that nearly all the comparisons are flawed.

“Few studies are rigorous,” said Alexander Volokh, a policy analyst for the Reason Public Policy Institute, in a report for the *Harvard Law Review* in 2002. “Even reasonably good studies leave much to be desired...most studies do not analyze both cost and quality and thus are of limited value in assessing private prisons.”

Nevertheless, reports that favor outsourcing prison services show why North Carolina, which emphasized savings, had a negative experience. Cost savings were the

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Lease-purchase deals
allow building of prisons
without voter approval

By PAUL CHESSER
Associate Editor

RALEIGH

The North Carolina General Assembly has fallen in love with nonprofit organizations that shield it from the direct responsibility for special projects funded by taxpayers.

One example is Golden LEAF, which administers half the state’s share of the 1998 lawsuit settlement with tobacco companies. Another is the E-NC Authority, which distributes public funds for Internet access in rural areas of the state.

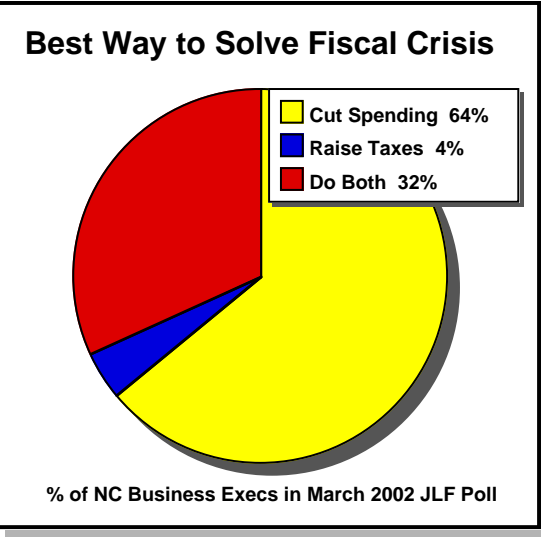
Two years ago the legislature authorized a new way to finance capital projects without the need for voters to approve new debt, as the constitution mandates. The method was used to build three prisons.

The legislature required State Treasurer Richard Moore to create the nonprofit North Carolina Infrastructure Finance Corp., which would be owner and landlord of the prison properties. The state was able to skirt the voter-approval requirement because technically it is the finance corporation taking on the debt, then turning around and allowing the state to use the facilities under a lease-purchase agreement.

The state may not be the borrower, but the only way the finance corporation could obtain its funding was because the state is obligated to make the lease-purchase payments. Former Deputy State Treasurer Charles Heatherly said at the time, “I don’t think it’s legal. If this is legal, then we can just borrow money for everything.”

Heatherly’s prophecy came true June 30 when Gov. Mike Easley signed the budget for fiscal 2004-05. Lawmakers authorized lease-purchase agreements to build three more prisons (\$234 million).

Similar arrangements will allow the state to finance: two prisons that were previously run by a private company (cost not determined yet); preliminary work on three juvenile delinquency facilities (\$6.8 million); a new state psychiatric hospital (\$110 million); funding for renovation and repairs to state property (\$300 million); and a “Structural Pest Control Training Facility” at North Carolina State University (\$310,000). CJ



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Richard Wagner
Editor

Paul Chesser, Michael Lowrey
Donna Martinez
Associate Editors

Karen Palasek, Jon Sanders
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Michael Walden, Karen Welsh
Contributing Editors

Jenna Ashley, Jonathan Jones,
Paul Messino, Andrew Symons
Editorial Interns

John Hood
Publisher

Don Carrington
Associate Publisher

Published by
The John Locke Foundation
200 W. Morgan St., # 200
Raleigh, N.C. 27601
(919) 828-3876 • Fax: 821-5117
www.JohnLocke.org

Bruce Babcock, Ferrell Blount,
John Carrington, Hap Chalmers,
Sandra Fearrington, Jim Fulghum,
William Graham, John Hood,
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ON THE COVER

• In the just-passed budget, the legislature authorized the state to purchase what once was its only two significant private prisons from the property trust company that owns them. The budget provisions signaled that the state plans to get out of privatization and will operate prisons itself for the foreseeable future. *Page 1*

NORTH CAROLINA

• Halifax Community College President Ted Gasper used state government resources to raise money for the congressional campaign of U.S. Rep. Frank Ballance, according to the school’s meeting minutes. *Page 4*

• Former U.S. Attorney General Edwin Meese, speaking at a John Locke Foundation luncheon July 8, said Democrats in the U.S. Senate are hijacking the nation’s courts. *Page 5*

• Gov. Mike Easley signed a \$14.8 billion budget June 30, which was hailed by some observers as a compromise that protects public services and adequately funds the ever-increasing cost of public education. Other lawmakers, however, contended it continues the state’s pattern of fiscal irresponsibility. *Page 5*

EDUCATION

• Fourth- and eighth-grade reading scores from the National Assessment of Educational Progress were released in June, and Easley and other state officials celebrated the results at a press conference at Green Hope Elementary School in Raleigh. *Page 7*

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• Karen Palasek writes that when the 2002 NAEP reading scores were released in late June, state education officials made an extraordinary effort to put a positive spin on the results. *Page 7*

• Students at two North Carolina elementary schools, which have a high percentage of children in the federal nutrition-assistance lunch program, have made extraordinary progress in academic achievement in recent years. *Page 9*

HIGHER EDUCATION

• The Supreme Court in June ruled on racial preferences in college admissions, and the decisions in Gratz v. Bollinger on preferences used by the University of Michigan, and Grutter v. Bollinger on preferences used by its Law School, brought little clarity to the issue. *Page 12*

• Jon Sanders writes that next to “diversity” a favorite euphemism at universities today is “critical thinking.” The usual occasions for its use, he says, are rather ironic — to stymie rather than stimulate critical thinking. *Page 13*

LOCAL GOVERNMENT

• A local taxpayer group is calling for a review of a controversial City of Wilson grant program that has distributed about \$6 million in utility bill late fees to nonprofit cultural and social service groups during its 14-year history. *Page 14*

• For the first time in 14 years, the General Assembly has added to the number of the projects to be paid for through the Highway Trust Fund. *Page 15*

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• Reviews of the books *Bush at War* by Bob Woodward, and *The Voluntary City: Choice, Community, and Civil Society*, edited by David Beito, Peter Gordon, David G. Green, and Alexander Tabarrok. *Page 19*

OPINION

• Richard Wagner writes that the anti-fat fanatics are bombarding Americans with a subliminal message: An individual — irresponsible slob that he is — no longer can be trusted to care for his own body. *Page 20*

• An editorial on emergency management services and how some counties use private providers while others rely on public-funded departments. *Page 21*

• George Leef wonders why universities worship race as the only factor to determine diversity. Instead, they should junk diversity and admit the brightest students. *Page 21*

PARTING SHOT

• Jon Sanders offers a handy flowchart that helps the masses understand why UNC can’t afford to cut ANYTHING. *Page 24*

Calendar

Education Reform Leader to Speak at Headliner Luncheon



Lisa Keegan of the Education Leaders Council

Lisa Graham Keegan, chief executive officer of the Education Leaders Council, will be the guest speaker at a John Locke Foundation Headliners luncheon at noon Sept. 8. The event will be at the McKimmon Center at North Carolina State University.

Keegan was named chief executive officer of the Education Leaders Council in May 2001. She is one of the nation’s most prominent and outspoken education reform advocates. She has gained national attention for her focus on student-centered funding and academic improvement and her passionate belief that every child can learn.

Keegan’s policy expertise and her history of successfully implementing state-level education reforms have gained her national accolades, frequent media attention, and made her a sought-after education reform expert.

She has testified frequently before Congress, state legislatures, and education organizations.

Keegan was a founding member of ELC in 1995 and a key architect of the organization’s growth from a small group of reform-minded state school chiefs to an organization of national prominence. Under her leadership, ELC’s membership grew significantly, both in numbers and diversity.

ELC today is the nation’s only “action” think tank for education reform. It has members in more than 30 states. ELC is on the front lines of education reform at the federal, state, and local levels, with a membership that includes governors, state school chiefs, state boards of education, individual state and local school board members, business leaders, charter operators, district superintendents, principals, teachers, and par-

ent of Public Instruction on a platform of rigorous academic standards, annual testing, stronger accountability, and school choice. She won handily and was re-elected in 1998 without opposition.

As superintendent, Keegan maintained general oversight of Arizona’s annual \$4.5 billion K-12 budget and served on the state boards for education, universities, community colleges, and charter schools.

Her insistence on stronger accountability and use of technology-based solutions led to the development and implementation of a state-of-the-art system to electronically track K-12 financial and academic data.

She advanced teacher-driven academic standards — standards that were nationally praised for their clarity and rigor — and withstood numerous assaults on her annual testing program.

She fought successfully for the creation of school choice, including Arizona’s landmark charter school and tuition tax credit laws, which together led to Arizona’s No. 1 rating in the Manhattan Institute’s annual Education Freedom Index.

The cost of the luncheon is \$20 per person. For more information or to preregister, contact Summer Hood at (919)828-3876 or events@johnlocke.org.

Shaftesbury Society

Each Monday at noon, the John Locke Foundation plays host to the Shaftesbury Society, a group of civic-minded individuals who meet over lunch to discuss the issues of the day.

The meetings are conducted at the Locke offices in downtown Raleigh at 200 W. Morgan St., Suite 200. Parking is available in nearby lots and decks. *CJ*

Prison Privatization Studies Fail to Answer All the Questions

Continued From Page 1

most emphasized reason for privatization in early studies, with good reason. As the trend grew in the 1980s and 1990s governments hoped the move would give some relief to budgets, and provide less-expensive solutions to crowded prison populations.

But a report released early this year by the Reason Foundation suggests that a cost saving, while usually a side benefit, isn't always the best reason to privatize prisons.

"Quality, flexibility, innovation, and competitive pressure on the entire correctional system may be as important as cost savings in justifying privatizing," wrote Geoffrey Segal in a January 2003 study for Reason called "Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services."

"But they are harder characteristics to measure and even harder to hang an argument on in a political debate," he said.

Segal said critics emphasize that privatization doesn't clearly provide cost savings in every case.

"Their assumption is that a mathematical process can determine policy choices," Segal wrote. "If that were true, a computer could decide whether or not to privatize, and we would not need elected officials."

Privatization advocates say the mere introduction of competition into the correctional system will improve conditions.

"Competition...affects the behavior of individuals throughout the system," Segal wrote. "Workers and managers throughout the system respond to privatization by improving cost efficiencies and the quality of their work."

Companies that bid for contracts with governments want to provide their customers with good service at the most efficient cost possible. Businesses that don't fulfill their contracts struggle, as did USCC in North Carolina, and are supplanted by more competent companies.

Still, both business- and government-run prisons can suffer if excessive regulations or other policies hinder their success. In a study for the Confederation of British Industry, author Gary Sturgess wrote that true competition, with flexibility to be able to solve problems, gives incentives to managers to effect reform.

"Al Gore wrote that the problem with modern government is that we have 'good people trapped in bad systems,'" Sturgess said. "Contracting and contestability transform those systems, setting good managers and staff free to deliver better results."

In the Reason study Segal examined data from other public vs. private "quality" comparison studies conducted since 1989. His analysis revealed that in 16 of 18 of those studies, "private prisons outperformed or were equal in quality to their government counterparts."

Segal also looked at rankings by the American Corrections Association, which offers guidelines for quality of operation, management, and maintenance. He found that 44 percent of contractor-operated prisons were accredited by ACA, compared to 10 percent approval for government-run prisons.

And for the lawmakers' most important consideration — costs — Segal found that of the 18 studies he evaluated, 12 estimated that private prisons saved 10 percent or more in costs over government-run prisons. The other six studies determined that private prisons saved between zero and 10

percent. None of the studies found private prisons to end in a net loss.

The largest amount of savings (up to 28 percent) were found in a 1994 Australian study, while a 1995 Tennessee study found that private prisons at least broke even with government-run prisons. But the Tennessee study also determined that privately run facilities provided better performance.

Studies that say privatization does not provide cost savings and better service come mostly from liberal groups such as employee unions and "equal justice" organizations. They contend that most privatization studies don't compare like facilities in size and security level, and that they don't consider all the costs of incarceration.

Charles H. Logan, a professor of sociology at the University of Connecticut who has conducted several studies of prison privatization, wrote in *Private Prisons: Cons and Pros* that expenditures often missed in studies include: the special costs of managing and monitoring contracts; the costs of services to displaced government workers; the profit incentives for private prisons to hold inmates longer than necessary; and potential costs to government because of increased liability exposure.

The American Friends Service Committee, a Quaker organization that "carries out...social justice, and peace programs throughout the world," reported in a February briefing paper that states often "cherry pick" prisoners by sending the least problematic prisoners to private facilities. AFSC said the practice "gives the illusion that the private prisons are operating more cheaply."

The group also says that other hidden costs include tax breaks, economic incentives, and other government subsidies given to correctional corporations. AFSC said an October 2001 study by Good Jobs First, which studies government subsidies, found that 73 percent of the 60 private prisons received some sort of development incentives.

A successful case study

Texas has the largest state prison population in the country and the second-highest incarceration rate among the states. (Louisiana ranks first) Texas has a reputation for toughness on crime, and has become the largest state user of private prisons to house its convicted criminals.

"I think [private prison companies] can perform a good service," said John Gilbert, director of the private facilities division for the Texas Department of Criminal Justice. "It just depends on what the state's needs are."

About 10 percent, or 15,000 of Texas' 150,000 prison beds are privately managed. Gilbert said the department as a whole doesn't take a stand on

the issue, but he believes the state has "a pretty good mix."

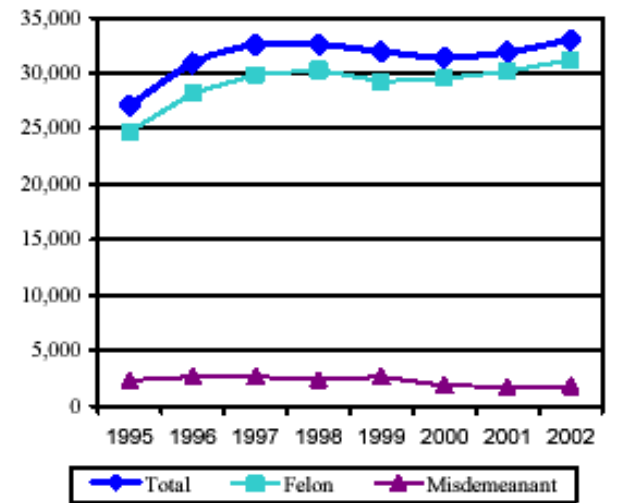
Texas has learned a lot about what leads to success in private prisons and their relationships with governments. Some expectations North Carolina had in its privatization contract with CCA were for services or requirements that Gilbert says Texas avoids.

For example, North Carolina's Mountain View prison lacked a psychiatrist and other medical staff as required in the contract. Gilbert said Texas doesn't send "special needs" inmates to its private prisons, which keep only a staff nurse and an outside contract with a doctor. He said the state's university medical system adminis-

Prison Population Trend

On June 30, 2002 there were 33,021 offenders in the prison system. The prison population has grown over the past few years, after a slight decrease from 1998 thru 2000. The prison population is projected to continue this increase in the future.

Date	Population
6-30-02	33,021
6-30-01	31,899
6-30-00	31,396
6-30-99	31,914
6-30-98	32,612
6-30-97	32,529
6-30-96	30,876
6-30-95	27,052



Source: N.C. Dept. of Correction Office of Research & Planning

Prison Population Projections
Prepared January 2003
By the Sentencing and Policy Advisory Commission In Conjunction with the
Department of Correction's Office of Research and Planning

FISCAL YEAR	PROJECTION as of June 30	Estimate Of Standard Operating Prison Capacity ¹	Estimate Of Expanded Operating Prison Capacity ²
2003	34,570	28,501	31,969
2004	35,851	31,093	34,561
2005	36,787	31,261	34,729
2006	37,739	31,261	34,729
2007	38,687	31,261	34,729
2008	39,557	31,261	34,729
2009	40,345	31,261	34,729
2010	41,068	31,261	34,729
2011	41,768	31,261	34,729
2012	42,413	31,261	34,729

¹ Standard Operating Capacity (SOC) is the bed space count yielded by calculating the number of general population single cells with one inmate per cell plus the number of inmates who can be housed in dormitories by dividing the gross square feet of each dormitory by 50 square feet and rounding to the closest double bunk configuration.

² Expanded Operating Capacity (EOC) is the bed space count yielded by calculating the number of general population single cells with one inmate per cell, the number of cells that house two inmates, and the number of inmates in dormitories operating at varying percentages beyond their Standard Operating Capacity (SOC) which is rounded up to the closest double bunk configuration.

ters much of the prison health care.

"We feel like our health care system is much more comprehensive than what [the private companies] can offer," Gilbert said.

Also, both of North Carolina's contracts with CCA called for an outside company to employ 100 prisoners at prevailing wages at each facility, a requirement that was never fulfilled. Gilbert said Texas has only one private prison with a similar job program, which is partially federally funded. Instead inmates work in institutional jobs and receive vocational training. "Generally, we don't contract with private companies to come in," he said.

Designing the contract, and subsequent monitoring, are most crucial to the success of private prisons, Gilbert said. "Here in Texas we've not been overbearing with contracts," Gilbert said, "but we've been pretty specific with what we want."

Owen agreed that vague wording and poorly defined contracts lead to poor results.

"That is probably the source of most if not all problems that arise," he said.

Gilbert acknowledged that some differences between private and public prisons, such as precise costs and certain aspects of performance, are difficult to ascertain. But he said the Texas legislature will likely authorize a new study of private prisons this year, because like most states, it is suffering from a budget shortfall and wants to find more cost savings.

"I think you're going to see a lot of services in our state for privatization," Gilbert said.

North Carolina's de-privatization

Officials from the North Carolina Department of Correction, and its Division of Prisons, failed to respond to several requests by *CJ* for interviews for this story.

But from previous news stories and documents provided by the department, there seems to be no appetite for trying prison privatization again. Even conservative lawmakers, often more receptive to the idea, are skeptical that prison privatization saves money or provides better services.

"Even though it looks as if when you run through the numbers you save money," said state Sen. Stan Bingham, a Denton Republican and appropriations subcommittee member on justice and public safety, "I'm very skeptical."

"The experience [the state has] had, and after studying it, they'd have to show me (it works) instead of just telling me."

Republican State Rep. Joe Kiser of Lincoln County, a former sheriff and Bingham's counterpart in the House, agreed that North Carolina's first experience with prison privatization was a disappointment. He believes the state gave the idea a legitimate try. "I think we did," he said.

Owen said the state and CCA agreed to return operating control to the Department of Correction in October 2000. He said his company tried to fulfill the terms of the contract it took over from USCC, but wasn't able to do so.

"We hoped to make some changes," he said, "but the state, rightfully so, had some expectations."

Around the State

• State Attorney General Roy Cooper and the U.S. Justice Department will not pursue criminal charges after their investigations of the state Division of Motor Vehicles. Officers in the western DMV enforcement section said they had been forced to make political contributions, fix tickets, and show favoritism toward trucking companies that had political connections. The Associated Press reported Cooper said that the appearance of wrongdoing was present, but that none of the charges could be proven in court.

• Satellite television companies DirectTV Inc. and EchoStar Satellite Corp. told the N.C. Department of Revenue that they want almost \$30 million in taxes refunded for their customers. The companies said the levy is unfair because cable TV companies don't have a sales tax, making satellite service less competitive. The companies also said they would sue Ohio for a similar tax.

• State Rep. Michael Decker, the social conservative who switched from Republican to Democrat shortly before the House speaker election this year, will have a GOP challenger in his Forsyth County district in 2004 if he chooses to run again. Walkertown Mayor Tom Southern announced last week he would run for the seat in the heavily Republican 94th District, where Democrats didn't challenge Decker in 2002 while he was a GOP candidate. Southern ran against Decker in 1994 for the Republican nomination and lost by a nearly 3-1 ratio. Decker said he hasn't decided whether he will run in 2004. Reported by the *Winston-Salem Journal*.

• *The Charlotte Observer* reported that under a provision in the campaign finance reform law passed last year, candidates who run against well-heeled opponents may raise more than the \$2,000 legal limit from individual donors. Depending on how much the rich candidate is willing to spend of his or her own money, a less-financed opponent could raise up to \$12,000 from individuals. *The Observer* noted that the exception could help North Carolina U.S. Rep. Richard Burr, a Republican senatorial candidate, in a race against plausible Democratic candidates Sen. John Edwards or Erskine Bowles, each of whom has significant wealth. The newspaper said Edwards spent \$6 million of his own money in his 1998 senate campaign and Bowles put \$6.8 million into his race against Sen. Elizabeth Dole last year.

• The North Carolina Global TransPark Authority hired a new executive director. Darlene Waddell, the authority's chief financial officer, was promoted to the top spot. The TransPark has fallen far short of creating the thousands of jobs that its supporters had promised. The General Assembly has appropriated millions of dollars to the TransPark, but eliminated funding in 2004. Waddell, echoing similar statements of past TransPark leaders, told *The News & Observer* of Raleigh that an aggressive effort to generate revenue will turn things around. *CJ*

Officials linked to discussion of skirting campaign finance laws

College Used for Fundraising, Transcript Shows

By DON CARRINGTON

Associate Publisher

RALEIGH

Halifax Community College President Ted Gasper used state government resources to raise money for the congressional campaign of Rep. Frank Ballance of Warrenton, records of a meeting at the college show.

Documents also show that Gasper and others also planned to funnel corporate contributions through the Alice Eason Ballance Education and Justice Foundation, a non-profit organization that Ballance, a Democrat, set up in October 2001, a few months before he filed to run for the U.S. House. Corporate contributions to political campaigns are illegal, according to federal campaign finance laws.

Ballance, a former North Carolina state senator, was elected to Congress in November 2002. The John A. Hyman Memorial Youth Foundation, another nonprofit founded by Ballance, is being investigated by state authorities for failure to fully account for almost \$2 million in state funds. Federal authorities are also believed to be investigating Hyman because the foundation failed to file required Internal Revenue Service annual reports.

On Jan. 15, 2003, Gasper, who had named himself chairman of the Finance Committee for Rep. Ballance's Congressional Ball, convened a meeting at the college in Weldon in Room 107 from noon to 1:30 p.m. "You have been selected to serve on the Finance Committee for Congressman Ballance's Congressional Ball," read the notice. Records obtained by *Carolina Journal* indicate that more than one meeting was conducted at the college.

Notices of the meeting were sent Jan. 10 to prospective committee members via e-mail from a state computer by Odell Holliday, Gasper's executive secretary. One item of correspondence indicated that Ballance was closely involved in the planning process. "Dr. Gasper and Alex met with Congressman Ballance last night to get the final detail and tickets have to be purchased..." read a message at the bottom of a list of potential committee members.

Details of the fund-raising plan were discussed by Gasper, Halifax Community College math instructor Alex Thannikkary, Weldon Mayor Johnny Draper, and others during a January 9 meeting at the college. Gasper tape recorded the meeting and later asked Holliday to transcribe the tape recording.

Holliday was transferred from her job after she refused to do any more political work for Ballance, sources told *CJ*. She was reassigned to the Scotland Neck branch of the college.

Copies of the transcript and supporting documents were distributed to Halifax Community College Board of Trustees at one of their official meetings, sources said. *CJ* obtained a copy of the transcript.

In addition to discussing ticket prices, location, and the other details, Gasper, Thannikkary, and Draper discussed a plan to raise money from businesses for Ballance's campaign, the 13-page transcript shows. A review of the discussion makes it clear that the three planners understood the restrictions of the campaign finance law.

The following is part of how the conversation went, according to the transcript: Thannikkary: "Then, Frank Ballance has an idea that he wants the proceeds to go to the Alice Eason Ballance Education and Justice Foundation so that is tax-deductible."

Gasper: "It is a 501(c)3 so that makes a big difference."



Rep. Frank Ballance (left) and Halifax Community College President Ted Gasper

Thannikkary: "That makes it more attractive..."

Gasper: "Back to his comment that John made as it relates to the corporate table, I would think that we would have a set of companies in town who could support being corporate sponsors for more than \$1,000..."

(Later) Thannikkary: "Concern regarding the money going to his mother..."

Gasper: "It is his mother. Alex and I were talking about that coming back. I don't know how he is planning to get it out of the foundation into campaign expense and I have not asked him that question and that is what I need to probe into. When we started the discussion Frank had to loan the campaign \$150,000 prior to the election so that I think one of the goals is to try to get as much of the \$150,000."

Draper: "It has to be an ongoing project, in my opinion. It is an expensive proposition to stay in office."

Gasper: "I understand the money was for that expense not for some foundation for his mother to take care of, that is my understanding, and I will verify that."

In closing, Gasper said, "I have some clarification which we change gears. There is some provision in the election code that corporate dollars cannot be given to candidates for Congress — corporate dollars. That's the reason for the foundation. Corporate dollars can go to the foundation. The rest of the dollars is going to have to be two different kind of tickets and two different kinds of checks because the money, the money for the campaign that has to be made for Ballance for Congress and has to be a personal check. The corporate checks can be made to the foundation. The foundation can pick up the expense for providing the event."

"So, the idea is that we are going to sell tickets to individuals that makes it tax deductible is a bad idea. It is going to be a donation to Ballance for Congress — two kinds of tickets for two kinds of money and Alex, that is where we got sidetracked, where we call it a reception and a ball so the reception, we would get tickets for corporate sponsors — we would sell tickets to corporate sponsors for the reception and will be made out to the Alice Ballance Foundation — that money will be used to offset the expense for providing the reception and

the ball which come as one event..."

The Articles Of Incorporation for the Alice Eason Ballance Education and Justice Foundation were filed with the North Carolina secretary of state's office Oct. 10, 2001. The registered agent for the organization is Frank Ballance, and the principal address of the foundation is 113 W. Market St. in Warrenton, also the address of Ballance's law office.

The 10 board members include his mother, Alice E. Ballance; his son, Warren County District Judge Garey M. Ballance; and his wife, Bernadine S. Ballance, a lawyer and member of the North Carolina Industrial Commission.

CJ has been unable to obtain any financial records from the foundation. Ballance's first quarter Federal Election Commission financial report shows he took in \$31,320 in February, all apparently associated with the Congressional Ball.

Gasper has not responded to several phone messages left by *CJ*, but in a July 3, Roanoke Rapids *Daily Herald* story he said, "I am completely innocent," denying allegations that he conspired to violate federal election laws.

"I have not chaired any committee or presided at any meeting related to this congressional ball," the newspaper reported Gasper as saying.

Documents obtained by *CJ*, however, indicate otherwise. A Jan. 16 letter inviting Gov. Mike Easley to the Congressional Ball was signed by Gasper as cochairman of the event.

Ballance's congressional spokesperson Joanna Kuebler would not answer *CJ*'s specific questions about Gasper's fund-raising activities, but said, "...the views your organization continues to express have created an environment wherein it is inappropriate to continue further dialogue."

In a July 7 *Daily Herald* story Ballance denied he suggested that Gasper and others funnel campaign contributions through a foundation. In the same story, Thannikkary's statements contradicted Ballance's. "We discussed that part of the proceeds go to his fund-raiser and also to his mother's fund..." *CJ*

Correction: The transcript was of a tape-recorded meeting, rather than of a telephone conversation, as reported in an earlier version of this story posted at CarolinaJournal.com

Judges exceed their constitutional authority**Democrats Hijack Court System, Meese Tells Raleigh Audience**

By ANDREW SYMONS

Editorial Intern

RALEIGH

Former U.S. Attorney General Edwin Meese, speaking at a John Locke Foundation luncheon July 8, said Democrats in the U.S. Senate are hijacking the nation's courts.

Meese criticized techniques used by Democrats to prevent a Senate vote on the Bush administration's judicial appointments. "The Democratic leadership in the Senate is unwilling to carry out its constitutional responsibility," he said.

Democrats are using filibuster to ensure that judicial nominations will never be brought to a vote, Meese said. A modern-day change in filibuster procedure enables lawmakers to do that, he said, because they don't have to be physically present to carry out the filibuster. As long as 40 senators agree to it and threaten its use, the filibuster continues until those involved vote to end it.

A minority of senators exercising virtual veto power has derailed America's court system, Meese said. "In some cases one-third of appellate court seats are vacant," he said.

The problem, he said, is that liberals look for nominees who will push a left-wing legislative agenda rather than for judges who would uphold the Constitution. "The Senate is going beyond its advise and consent power," he said.

The crossing of constitutional bound-

aries is evident in the questions that senators asked during the Judicial Committee's interviews of nominees, Meese said. The senators apply a "litmus test" by asking judges how they would rule on certain matters without having heard a case or possessing any background in the matter. For example, certain Democratic senators are likely to ask potential judges how they would rule on controversial issues such as abortion.

Judges go too far

Too often judges push public policies in their decisions, Meese said. "There's been an increasing tendency for the courts to, on certain occasions, abandon their constitutionally limited role as judges and leap over that wall that separates the judicial branch and the legislative branch," he said.

Meese cited the recent Supreme Court decision on affirmative action as one example of judges behaving like legislators. "Indeed to some the majority in the Michigan Case has the tone of a legislative enactment," he said. Sandra Day O'Connor, in her decision, added a sunset provision to the policy when she pronounced that while necessary now, affirmative action wouldn't be needed in 25 years, Meese said.

The purpose, he said, of judges in this country is to accurately interpret the Constitution and not to impose their values by pushing policy. He recalled Ronald Reagan's speech at the swearing in of U.S. Supreme Court Justices William Rehnquist

and Antonin Scalia when he said, "Hamilton, Jefferson and all the founding fathers recognized that the Constitution is the supreme and ultimate expression of the will of the American people. They saw that no one in office could remain above it if freedom were to survive through the ages." Expressing concern that judges have strayed too far from the Constitution, Meese said, "We've made some real departures from what the Founders had in mind."

To solve the problem, Meese said, the Senate must focus its review process on judges' past work, honesty, and commitment to upholding the Constitution. Also, the Senate must re-instate the traditional filibuster. If Democrats want to use filibuster as a policy tool, they should have to stand on the Senate floor as they did in the past and show the American electorate how silly a filibuster really is, he said.



Carolina Journal photo by Richard Wagner

Ex-U.S. Attorney General Meese speaks at the luncheon.

Just before deadline**Easley Signs \$14.8 Billion Budget That Increases Spending, Taxes**

By JONATHAN JONES

Editorial Intern

RALEIGH

Gov. Mike Easley signed a \$14.8 billion budget June 30 that will fund state government through June 2005.

Approved just before the deadline of midnight, the measure has been hailed by some observers as a compromise that protects public services and adequately funds the ever-increasing cost of public education. Other lawmakers, however, contended it continues the state's pattern of fiscal irresponsibility.

The Senate approved the budget on a party-line vote of 25-19. The House voted 76-39 in favor. Arguments in both chambers included heated debate about the tax burden in North Carolina and the impact of the budget on a struggling state economy.

Sen. Patrick Ballantine, R-Wilmington, said, "This plan calls our fiscal integrity into question. We have a spending problem in North Carolina, not a revenue problem."

A 3 percent increase in General Fund expenditures is scheduled for the new fiscal year and the rate of spending will increase to 5 percent by 2005. Higher sales and income taxes, by \$427 million and \$124 million respectively, are also on the horizon.

Lawmakers who supported the budget highlighted a commitment to keep social and education spending apace with population growth. Sen. Charlie Dannelly, D-Charlotte, said, "It pains me when we talk about cutting. The invisible people who think they have no voice here on the floor are the ones that suffer."

Included in the plan are pay increases

for teachers, averaging 1.8 percent, a one-time bonus of \$550 for each state employee, and a \$113 million contribution to the State Health Plan system. A second-grade class-size reduction initiative is budgeted for \$25.3 million. Another \$46.6 million is allotted for 518 new university positions.

But John Hood, president of the John Locke Foundation, indicated the budget includes much more that taxpayers may find objectionable.

"The governor and the legislature aren't raising taxes, hiking fees, and raiding trust funds to pay for the core functions of state government, such as law enforcement and public schools. Taxes are rising to finance public assistance spending, to subsidize researchers and nonprofits, and to pay off bond issues that were originally sold to the public as not requiring any tax increases," Hood said.

The bulk of an authorized \$249 million increase in the cost of servicing the state's debt over the next two years is attributable to the passage of a \$3.1 billion bond issue in 2000 for university and community college construction. A prominent element of the campaign for the bonds was that, according to officials, it would not necessitate a tax increase.

Most of the new revenue in the 2003-05 plan comes from a two-year extension of the "temporary" half-cent sales-tax increase originally enacted in 2001 and once set to sunset June 30. On the spending side, included are subsidies to nonprofits through such means as Commerce Department grants to "economic development" agencies and continued payments to the Golden LEAF Foundation.

CJ



For more than 12 years, *Carolina Journal* has provided its thousands of readers each month with in-depth reporting, informed analysis, and incisive commentary about the most pressing state and local issues in North Carolina. With a particular emphasis on state government, politics, the General Assembly, education, and local government, *Carolina Journal* has offered unique insights and ideas to the policy debate.

Now *Carolina Journal* is taking its trademark blend of news, analysis, and commentary to the airwaves with a new program — **Carolina Journal Radio**.

A weekly, one-hour newsmagazine, **Carolina Journal Radio** is hosted by John Hood, publisher of *Carolina Journal*, and features a diverse mix of guests and topics. Education reform, tax policy, the state legislature, affirmative action, air pollution, freedom of the press and the courts — these are just a few of the subjects that **Carolina Journal Radio** has tackled since the program began production in May.

Currently broadcast each weekend on 13 commercial radio stations — from the mountains to the coast — **Carolina Journal Radio** is a one-of-a-kind program that seeks to inform and elevate the discussion of North Carolina most critical issues, and to do so in a fair, entertaining, and thought-provoking way.

For more information or to find an affiliate of *Carolina Journal Radio* in your community, visit www.CarolinaJournal.com.

NC School News in Brief

• The N.C. League of Charter Schools reports a flurry of activity in the General Assembly on numerous bills that affect charter schools.

S965 would amend the North Carolina state constitution to “essentially change[s] the language that says that fines and forfeiture money SHALL go to public schools to fines and forfeitures money MAY go to public schools,” said Roger Gerber, president of the League of Charter Schools.

Responding to concerns about how the changes might affect charters, Sen. Fern Shubert, R-Union, first said that the amendment might threaten all schools. Shubert was reassured after consulting with the amendment’s authors. “Apparently the intent is to say that the state ‘may’ set up a fund for certain types of penalties, but it doesn’t change the ownership of any funds, as shown by the end of the sentence,” she said. Measures in the bill had not been finalized at press time.

• In further charter news, the League of Charter Schools also reports on S359, the “LEA’s Authority to Operate Charter Schools.”

According to Gerber, the bill started off as a Forsyth County initiative, and would have permitted the Forsyth LEA to operate a charter school. Amendments to the bill resulted in a change that would allow every LEA to operate its own charter school. The independent charter cap will stay at 100, but an increase in charters of 10 under the law would apply only to the LEA-run versions, Gerber reports.

• Schools that fail to make adequate yearly progress two years in a row are designated schools that “need improvement,” according to the No Child Left Behind law. This year, 37 schools in the state fall into the “needs improvement” category. If they were low-performing schools last year, state officials placed them on a ‘watch.’

State Schools Superintendent Mike Ward; Howard Lee, chairman of the State Board of Education; and John Dornan of the Public School Forum told the press that schools that failed last year had this year’s results certified early. The reason for the push was to allow parents with children in failing schools time to find options. Those parents are entitled to choose a transfer to a nonfailing school.

Among the 37 schools that did not meet AYP were 19 charter schools and 18 regular schools. All of the “alternative population” charters (story pg. 8) failed to meet AYP in the preliminary report.

Preliminary results are available for charters as well as regular public schools on the web.

The main report site is www.ncpublicschools.org/ncfb/03ayprelease.html. For charter school data, link from the main report page to <http://149.168.35.203/aypcharter.html>. *cj*

Adequate Yearly Progress At First Glance

Preliminary reports show that 47 percent of schools will meet the goals

By KAREN PALASEK
Assistant Editor

RALEIGH

Release of certified adequate yearly progress results won’t occur until September, said North Carolina State Schools Superintendent Mike Ward at the 2003 AYP video conference in July. The conference was cosponsored by the Public School Forum and the Public Schools of N.C.

AYP results measure how student groups, schools, and districts are doing in meeting the goals of the No Child Left Behind federal education law. The state will release the official results for AYP in the fall, at the same time that state ABC’s scores become available to the public.

Speaking from Raleigh, a panel of three representatives of state school interests met with educators, the media, and school administrators in the video communications room at the Department of Public Instruction. On the panel were Superintendent Mike Ward; John Dornan, executive director of the Public School Forum of North Carolina; and Howard Lee, chairman of the State Board of Education.

The video conference was linked to sites in Asheville, Charlotte, Greensboro, Greenville, and Wilmington. Two-way remote feeds allowed questions for the panel from all of the sites. As the presentations began, the state simultaneously posted preliminary AYP results on the web at www.ncpublicschools.org/ncfb/ayp.html.

Early indications

In North Carolina, early data show that about 47 percent of schools will likely make their AYP goals in every category. That’s what the law requires for a “passing” school. According to reports appearing in *The News & Observer* of Raleigh some schools that were rated “schools of excellence” under the ABC’s accountability system won’t make the grade if preliminary results stand.

Green Hope Elementary in North Raleigh was cited by the *N&O* as a school of excellence that failed to meet one target, resulting in failure for the school. Reading scores for low-income students did not make adequate yearly progress. “If we were teachers grading our school, we would have made it,” Principal Annice Hood commented to the *News & Observer* about the school making 95 percent of its total targets.

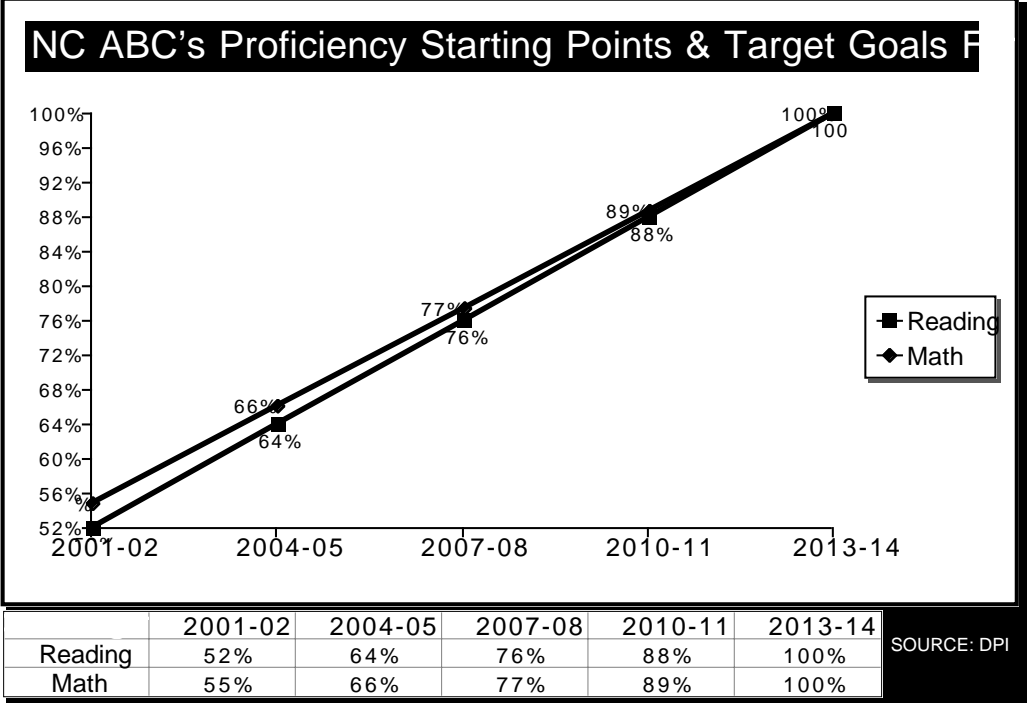
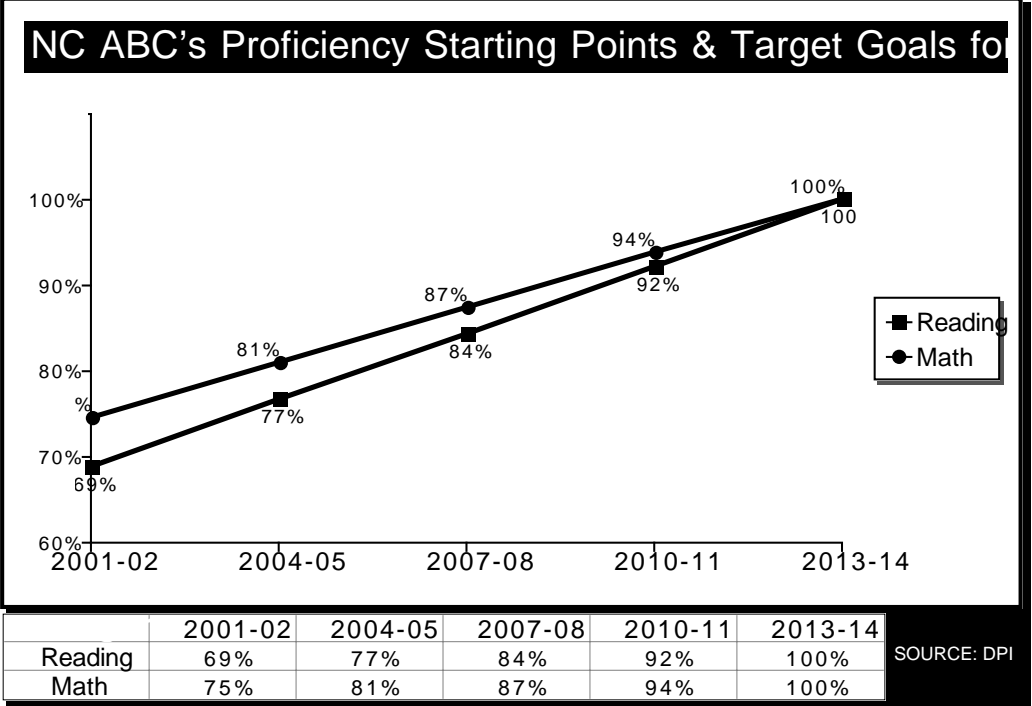
Green Hope elementary hosted Gov. Mike Easley’s press conference for the National Assessment of Educational Progress 2002 reading and math scores in June. Easley praised the state’s performance on the NAEP tests, emphasizing the need to adopt the NAEP’s national standard as a means of comparing North Carolina to other states.

The NAEP sets a proficiency standard considerably above that required by ABC’s grade-level readiness. By NAEP standards, just 32 percent of fourth-graders in North Carolina met the proficient-or-above standard in reading.

AYP and Title I federal funds

Schools that have high percentages of low-income children receive Title I federal funds the federal government. About half of North Carolina schools use Title I funds. If a school does not meet the NCLB adequate yearly progress standard, it may lose its Title I funding.

The thrust of the adequate yearly progress requirement in No Child Left Be-



hind is to address education practices as well as student achievement.

According to the North Carolina preliminary briefing on AYP, the purpose of No Child Left Behind is “for all public school children to perform at grade level in reading and mathematics by the end of the 2013-14 school year.”

Starting points and timelines

Schools must test at least 95 percent of children in each subcategory, according to the law. Every three years, the progress of each subcategory of children will be measured against a predetermined benchmark. In theory, progress could remain flat in the years between benchmarks, but in practice it will probably be moving toward the next level. In 2013-14, all groups should be at 100 percent proficiency.

North Carolina filed its improvement plan with the U.S. Department of Education in 2002, and was one of the first dozen states to be approved. The state now has proficiency starting percentages in each grade and subject, and target proficiencies it must hit at regular intervals. Tenth-graders in the state will have to make relatively steep progress to achieve 100 percent proficiency by 2014, given their starting points in reading and math.

A subgroup that “counts” in a school is one that has 40 or more student members. Each subgroup, and the school as a whole, must make adequate yearly progress for the school to pass. A school will fail if one or more subgroups don’t meet the AYP goal.

Under NCLB, even schools like Green

Hope that are schools of excellence under the ABC’s, can fail.

“Although the law is a federal one,” the Adequate Yearly Progress press briefing reads, “compliance was decided upon through many state decisions on assessments, starting points, and target goals, increments of target goal increases, the minimum number of students needed to comprise a group, days of membership necessary to be considered full-time students, and what constitutes progress for attendance and graduation rates used in accountability calculations.”

If schools miss some targets, but still make “significant year-to-year improvement,” they may still make AYP under the “safe harbor” provision of the law.

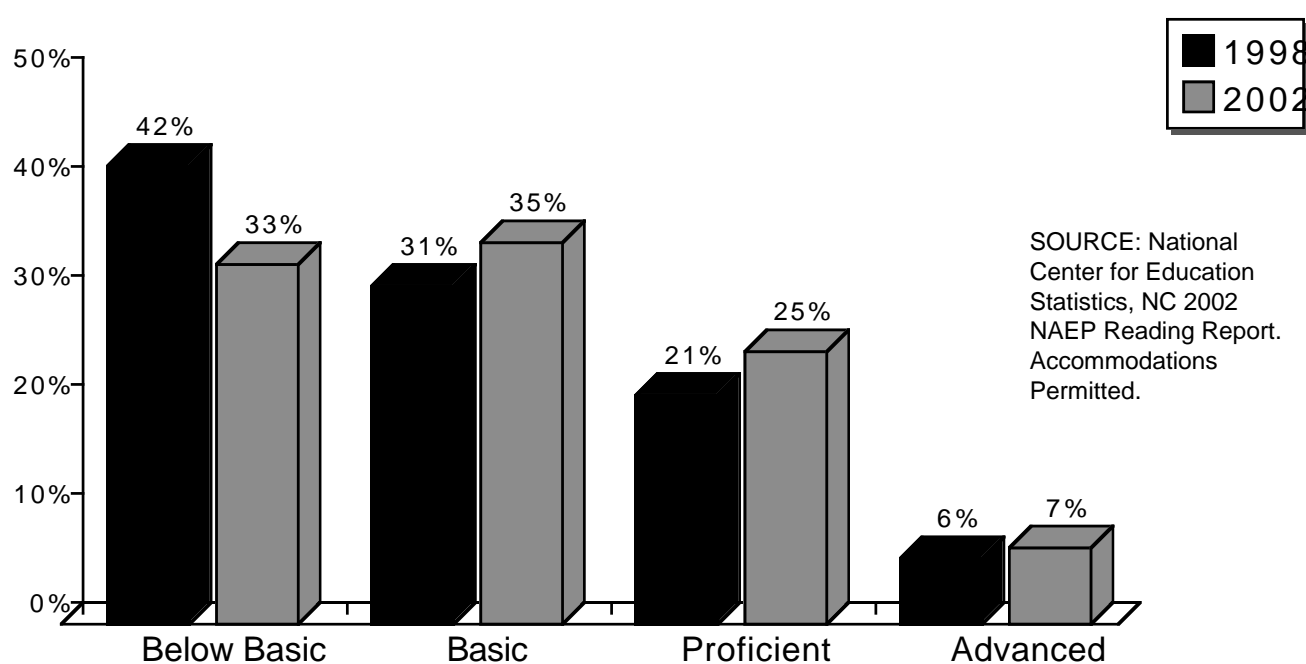
Safe harbor applies if a school reduces the percentage of students scoring below proficient by 10 percent over the previous year, and makes progress on an “other academic indicator” for that group.

This is typically the graduation rate for that group, but may be another measure. Measures such as graduation rates can be disaggregated to show how particular groups are performing.

North Carolina seems to be moving toward an external yardstick in education. Adopting a national standard such as the NAEP will mean serious work ahead for students and teachers alike. But state officials are optimistic.

Commenting on the state’s education budget, the governor noted in his address at Green Hope that “some very important things” had been accomplished. “We’ve reduced class size to 18, the magic number where you see results,” he said. *cj*

NC 4th Grade NAEP Reading Proficiency Levels:



Large gains for elementary students; eighth and 12th grades level off

Putting N.C.'s Reading Scores in Perspective

By KAREN PALASEK

Assistant Editor

The National Center for Education Statistics released fourth- and eighth-grade reading scores from the National Assessment of Educational Progress in June, and Gov. Mike Easley, State Board of Education Chairman Howard Lee, and State Superintendent Mike Ward celebrated the results at a press conference at Green Hope Elementary School in Raleigh. Students from fourth-grade classes filed in and filled the carpeted floor space to listen to Easley's message.

The center-stage graphic display labeled "NC Above National Average on NAEP" plotted North Carolina's fourth- and eighth-grade reading scores from 1998 to 2002. The governor, pointing to the rising reading scores, began with enthusiastic praise for the accomplishments of fourth- and eighth-graders in the state. North Carolina's fourth-grade reading scores rose 9 points, moving from 213 on the 1998 NAEP to 222 in 2002. The fourth-grade gain is statistically significant, and North Carolina's fourth-graders scored above the national average of 217 in 2002. Statistically significant results cannot be attributed to random or uncontrolled factors that might affect test scores.

The fourth-grade scores in North Carolina reflect a national trend in reading. The national average for fourth-grade reading rose 4 points in 2002, increasing from 213 to 217.

National and statewide trends in eighth-grade reading also rose. The national average for eighth-grade reading scores rose from 262 to 264. North Carolina's eighth-grade reading scores improved from 262 to 265. The numerical gain in the eighth grade was not statistically significant, according to the NAEP report.

During the press conference, Easley praised the advances in reading North Carolina's students have made. "We are 77 percent proficient in North Carolina," Easley said. "You can't manipulate a national test." Ward was more reserved. "What NAEP calls proficient is something very different than our Level III," he said.

Adequate vs. proficient: different targets

The NAEP identifies four levels of subject mastery. Student scores place them in "below basic," "basic," "proficient," or "advanced" achievement categories. According to the NAEP State Reading 2002 report for North Carolina, fourth-grade proficient-level readers "should be able to demonstrate an overall understanding of the text, providing inferential as well as literal information. When reading text appropriate to fourth grade, they should be able to extend the ideas in the text by making inferences, drawing conclusions, and making connections to their own experiences. The connections between the text and what the student infers should be clear." The proficient standard requires that students show they have a command of

"challenging subject matter," according to the NAEP.

The North Carolina end-of-grade tests in each subject are scored on a lower proficiency standard than that used by the NAEP, according to officials. Our Level III score requires that students "consistently demonstrate mastery of the grade-level subject matter and skills, and [are] well-prepared for the next grade." In North Carolina, about 77 percent of fourth-grade reading students are at grade level, according to 2002 end-of-grade test results. The NAEP proficient standard requires achievement beyond grade-level minimum. "It's very high, and something to which we should aspire," Ward said about the NAEP standard.

According to the Department of Public Instruction's "Understanding Your Child's End-of Grade Test Scores, Grades 3, 4, and 5," the end-of-grade reading test items fall into one of three categories: cognition, interpretation, or critical stance. Questions about the main idea, vocabulary, or recall of specific information are part of cognition. Interpretation includes inferences about attitude or mood, and critical stance requires the reader to make comparisons between people, events, or situations in the story. Level I or II students will have insufficient or inconsistent mastery in these areas, and have below grade-level achievement.

NAEP reading scores for eighth-graders rose 3 points... but have educators concerned about the statistically flat performance.

Middle and high school students

Although the NAEP results in reading looked exceptional for fourth-grade students, education officials expressed concern about upper-level results. NAEP reading scores for eighth-graders rose three points, one point more than the national average, but have educators concerned about the statistically flat performance. North Carolina 12th-grade students' NAEP reading scores dipped this year. During the NAEP release press conference, Ward said, "Twelfth grade was a little disappointing. We tended to lose ground or stay flat." Ward questioned whether "this is a product of test saturation," when discussing the upper-level results.

The end-of-grade test results in reading have a pattern of improvement similar to that of the NAEP. Elementary grades scored well on the reading end-of-grade tests, and average pass rates may be in the 80 to 90 percent range once the results are certified. The *Winston-Salem Journal* reported that 81 percent of third-graders, and 88 percent of fifth-graders passed the reading end-of-grade test this year. Both are improvements over last year's pass rates. But middle- and upper-level students aren't making the same gains. Mecklenburg, and Forsyth report end-of-course scores that are mixed or stagnant in those grades. As students prepare to exit the public schools for college and other pursuits, school officials worry over the lackluster results.

According to the *Winston-Salem Journal*, Forsyth school board member Buddy Collins said, "We've put a lot of emphasis on elementary and getting that base done, but I'd like to put some of that emphasis in high school." *cj*

Learning Curve or Learning Spin?

When the 2002 NAEP reading scores were released in late June, education officials made an extraordinary effort to put a positive spin on the results. On its face, the nine-point gain in the fourth grade seems to need no defense. The eighth-grade score gain was presented as "significant." Superintendent Mike Ward admitted afterward that the three-point eighth-grade gain was not *statistically* significant. Why so much spin?

As it turns out, North Carolina's exclusion rates on the fourth-grade reading exam, at 12 percent, were the highest in the nation. They were up five points up from the 7 percent fourth-grade exclusion rate in 1998.

Anticipating that extraordinary exclusion rates would raise some flags, education officials prepared a Q & A handout for the NAEP reading scores press conference. The press release cites a National Center for Education Statistics study of NAEP exclusion rates. "With regard to cross-state comparisons, the correlations between rates of exclusion and average 2002 reading scores were not found to be significant," the press release reads. "In other words, higher exclusion rates were not associated with higher average scores in 2002."

Surely this suggests to the public that exclusion rates weren't a factor in those fabulous fourth-grade score gains. What it really means is that North Carolina's ranking against other states wouldn't have changed as a result of exclusions. It doesn't say scores would be unchanged. The source of these statements is the *NAEP 2002 Reading Report Card, Appendix A*.

Had education officials kept reading, they would have discovered the next sentence in the *NAEP Report Card*. It states that "the correlations between changes in the rate of exclusion of students with special needs and average reading scores gains from 1998 to 2002 were found to be moderate (0.50 at grade four and 0.56 at grade eight). It also says that exclusion rates alone "do not explain the entirety of score gains." The North Carolina Education Alliance pointed this out shortly after the scores became public. Instead of zero effect, it turns out that exclusion rates have a moderate effect on scores.

NAEP writing test exclusions in North Carolina are higher than the national averages. In a preemptive defense, State Board Chairman Howard Lee's op-ed "Different Yardsticks Measure Progress" presents a plea to the public to believe the State Board's announcements about the NAEP and upcoming ABC's test results. In it, Lee warns the public not to heed "some critics of our public schools" who "may try to use these numbers to say our schools are failing."

To their credit, education officials were careful to identify statistically significant score gains in the NAEP 2002 writing results press conference. They even provided a definition of statistical significance in the press release. Gov. Mike Easley, in an uncharacteristic endorsement of national tests, stated that NAEP scores are "the only bar that compares apples to apples, the only bar that compares one state to another on the same test."

Whatever we don't yet know about the state end-of-grade tests, it seems clear that the Easley administration and Lee are preparing the public for the announcements.

Easley has begun to create a "safety" in the NAEP tests, shifting public attention to a national standard in his "apples-to-apples" statement. Stay tuned — the spin machine is probably just warming up.

cj



Karen Palasek

School News: Nation

• *USA Today* and *Education Week* report that the National Education Association is planning to sue the federal government over provisions in the No Child Left Behind law.

The costs of additional testing, including the required NAEP tests at least every two years, are the responsibility of school districts under the law. Schools that miss adequate yearly progress targets may incur extra costs to remedy the problem.

According to Robert Chanin, NEA general counsel, the suit will contest the financial burden that a school district must bear to comply with required testing under the law, or to transfer students from failing schools.

Extra costs include transportation to a nonfailing school for students, and/or supplementary services such as tutoring.

The teacher's case rests on a provision that prevents the government from imposing costs associated with legal compliance, Chanin said.

A reaction to the NEA's decision came from U.S. Secretary of Education Rod Paige. In a statement to the press, Paige expressed regret that the 2.7 million teachers in the NEA are trying to "hinder the goals of true reform."

Attempts to organize states to oppose the law, or opt not to accept Title I funds, are proceeding. *Education Week* reports that Hawaii, Louisiana, Minnesota, Nebraska, and Utah have placed legislative wheels in motion to oppose the federal requirements.

Private schools are not subject to the provisions of No Child Left Behind, and do not participate in the Title I federal funding program. If public schools decide to opt out, and are allowed to opt out, they stand to lose Title I funds. These funds are earmarked for low-income-student programs.

According to *EdWeek*, the NEA is devoting resources and effort toward a recruitment and lobbying campaign called "great public schools for every child." The campaign aims to organize and activate local chapters and teachers against NCLB. The NEA has committed full and part-time staff, plus \$300,000 from the current budget to the effort, says *EdWeek*.

The teacher's organization is targeting states that have low membership rates, according to the reports. These states include Arkansas, Louisiana, Mississippi, Nevada, New Mexico, and South Carolina. NEA Director John Stocks has announced plans for the NEA to take active measures to increase "market share" in those states.

At the July NEA convention in New Orleans, delegates were urged to email their representatives, telling them to oppose provisions of NCLB. The NEA is particularly opposed to the "highly qualified" requirement for teachers, according to the report.

The new NEA policy statement recommends mandatory kindergarten for 5-year-olds. It also recommends universal voluntary pre-K for 3- and 4 year-olds. *CJ*

4 new charters approved, but charter school cap remains

Alternative School Status Fits Some Charters

By KAREN PALASEK

Assistant Editor

RALEIGH

The State Board of Education gave preliminary approval to four new charter schools at its meeting in July. The schools are Carolina International School in Cabarrus, Children's Community School in Mecklenburg, Kinston Charter Academy in Lenoir, and PACE Academy in Orange counties. They plan to open for the 2004-05 school year.

For parents seeking alternatives to traditional public schools, the charters are a welcome addition. Still, the new charters represent no net gain in the 100-school charter cap, the maximum number allowed in North Carolina.

The schools bring the currently authorized number to 98, just two schools short of the limit. A 99th school application from Guilford Early College may falter if 50 percent of its high school faculty are not certified by the state, as the No Child Left Behind law requires.

In North Carolina, the final authorizing body for charter schools is the State Board of Education. State law allows local boards to pre-approve charter schools, and a state-level Charter School Advisory Board makes preliminary recommendations. But all binding decisions rest with the State Board.

The current cap on charter schools places a heavy burden on the performance of existing charters, said Roger Gerber, president of the League of Charter Schools. With 98 schools now approved, and the 99th pending review, opportunities for would-be charter operators to increase student choice have virtually come to a halt. Most charter slots are allocated by a lottery among applicants.

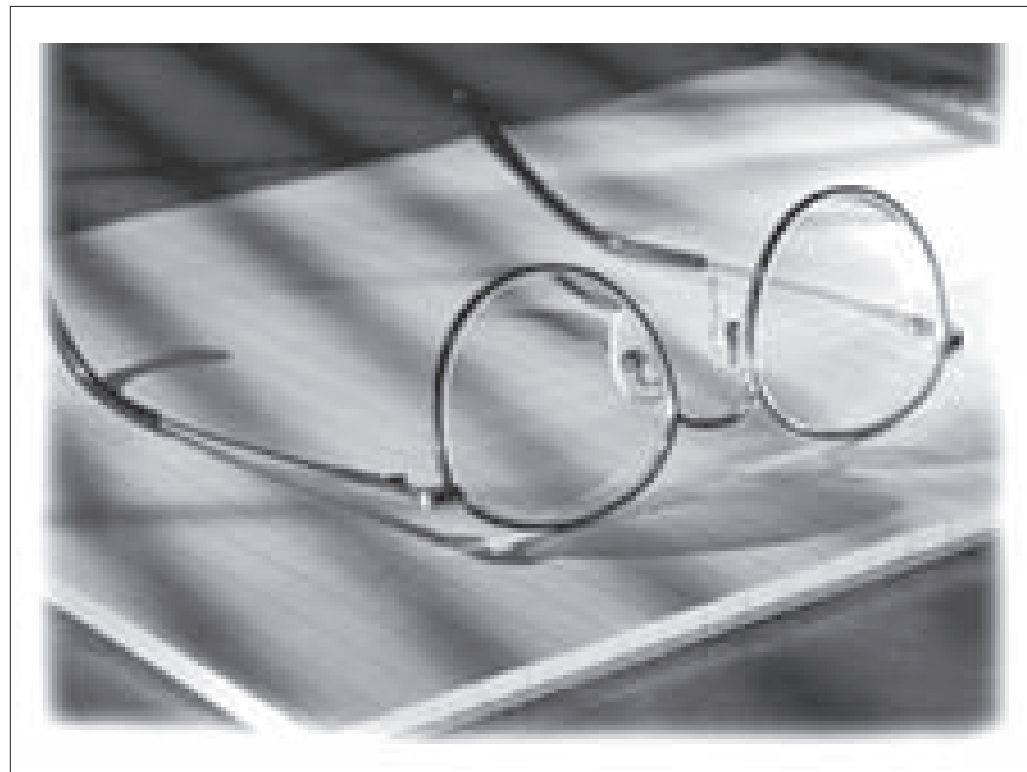
According to Gerber, there are trade-offs for charter operators when it comes to funding and accountability. Charters receive funding for students, but not for capital expenses. Some look and operate much like regular public schools. But a few serve students that would be considered "alternative populations" in the regular schools, Gerber said. Under No Child Left Behind, the public school status of these charters leads to accountability problems.

Crossnore Charter

At Crossnore Charter School, Inc., Principal Marion Krege serves children who 12 years ago would have been sent to regular public schools. Most of last year's 76 students at Crossnore were residents of the Crossnore Children's Home. The residential home is a refuge for abused, neglected, and abandoned children. The children are typically placed in the Children's Home by the courts — taken off the streets, or out of abusive homes. A few are placed by a relative. "When charter schools came along, that was a perfect fit for the children," Krege stated. Krege has been in education for almost 40 years.

According to Krege, the 2002 Children's Home statistics show that 67 percent were in homes with substance abuse, 86 percent were abused or neglected, and 12 percent were abandoned and left to raise themselves. The statistics overlap because some children fall into more than one category.

When the children arrive at the school, Krege said, the Home develops a plan of care "to determine where the child is, and



where you want to move the child in a plan." Case managers, counselors, and a psychologist work with the kids on school, family, and life issues. Academically, Crossnore gets some high-school-age kids who are seven years behind in reading. Many have never learned any significant self-discipline, and the demands of school are far outside their frame of reference.

Krege would like the school to be considered for alternative school status, she said, because "These kids don't do well in the regular public schools, and the regular schools don't want them." Although Crossnore has been a low-performing school for two years, Krege anticipates improvement in the 2003 test results. She is glad to be part of the public schools, she said, because of public funding.

Under No Child Left Behind, Crossnore children must meet the same adequate yearly progress goals in each grade as children in normal school and family situations.

"To hold us accountable to the same standard is unfair," she said. "We would like to stay a public charter school, but be able to use alternative assessments. We'd like to continue to voluntarily participate in the state tests as well, but not be required to meet the same accountability standard."

Enrollment is unpredictable and transient, which makes achievement goals even harder to reach. Nevertheless, Crossnore graduated seven high school students in 2003. Former State Board of Education Chairman Phil Kirk was the speaker at Crossnore's 2002 commencement ceremony.

Charters such as Baker, Grandfather Academy, Crossnore, Lakeside, and Kennedy (Charlotte), all serve students, Gerber said, that would qualify as alternative populations. The "alternative" designation would allow more flexibility in testing and assessment, and put them on an equal footing with alternative schools in the non-charter category. Without alternative status, they may find it difficult to meet the AYP requirements.

Charter outcomes and competition

North Carolina has produced positive results in many charter schools so far. In 2002, the North Carolina Education Alliance measured average SAT scores for charter

high schools that had been in operation for at least three years. The average SAT score for conventional public schools in North Carolina was 980 in 2002. Three-year-old charters had an average score of 1019, just a point below the national average. In SAT scores, charter schools in North Carolina have been holding their own.

An extensive study of charter performance was done on California schools by the Rand Corporation. The 2003 study, "Charter School Operations and Performance: Evidence from California," was designed to compare the academic performance of regular public school students with that of charter school students. It also looked at differences in student performance that might be caused by differences in the types of charter schools that children attended.

The California Academic Performance Index used in the study includes Stanford 9 scores, the California Standards Test, and other measures. The study could not include about 25 percent of California's charters, a factor that Rand says may make affect some of the results they measured. School-level outcomes for start-up, conventional, and conversion charter schools show similar achievement growth to conventional public schools, Rand said.

The type of charter school also made a difference. Non-classroom instruction was correlated with lower scores, and newer schools were correlated with higher scores. Math and reading results were sensitive to the grade and the age of the student.

In the longitudinal study, charter schools of all types had slightly worse math, but slightly higher reading scores, for middle and high school students than did conventional schools. "Overall, the analysis shows that charter school students are keeping up with comparable students in conventional schools," the study says.

The competitive effects of charters on conventional schools are of interest, but hard to measure.

"Because few students enroll in charters, few conventional public schools face the direct pressure of their students leaving for a charter school alternative," the study says.

Competitive effects may exist, however. As Rand notes, "One of the most measurable ways in which charter schools can influence conventional public schools is through the competition for students." If conventional schools feel pressure to improve through "operational changes," the charter effect will be positive for conventional school students as well. *CJ*

*School Spotlight: schools that succeeded with low-income students***West Lumberton and Cedar Grove Elementary Students Stand Tall**

By JONATHAN JONES
Editorial Intern

As the new school year approaches, students and administrators alike around North Carolina will be thinking about the challenges that face them over the coming months. In two of those schools, teachers, students, and parents can look back to a job well done, and look forward to the next school year with added confidence.

Students at West Lumberton Elementary in Robeson County and Cedar Grove Elementary in Nash County have reason to be more confident—they have managed to make extraordinary progress in academic achievement over recent years. Both schools also have a high percentage of children qualified for the federal nutrition-assistance lunch program.

West Lumberton Elementary

Students at West Lumberton Elementary improved from a 49 percent combined proficiency in 1997 to an 82 percent proficiency rating by 2001. The school was named a “school of distinction” in 2001, and classified as one of the 25 most improved in the state. These accomplishments, school officials say, are a testament to insistence on high standards.

West Lumberton Elementary serves 165 students, from pre-K through fifth grade. Just over 98 percent of the students can be classified as needy, qualifying for free or reduced lunch. But Principal Juanita Clark said academic performance can be dramatically improved, despite income barriers.

According to responses to the North Carolina Education Alliance survey of teachers and administrators, advances at West Lumberton are not rooted in greater funding, additional administrators, or trendy theories. Clark highlighted small-group tutoring, incentives for academic progress, and good behaviors factors. She also cited character education and partnerships with community organizations such as the Kiwanis Club and area churches as reasons for student success.

The focus on fundamentals has been a fruitful enterprise, Clark said. Accelerated reading initiatives led to the offer of incentives and financial support from both McDonald’s and Pizza Hut. Volunteers and tutors arrive each day to provide individual attention and extended instruction in reading. And each day the school sets aside time

for individual, silent reading, a priority, Clark said.

The survey reports a strong focus on staff development, including greater cooperation between teachers and administrators. Staff development activities create a shared vision among staff, making cooperation easier and more productive. Clark said she and school staff set high expectations, which translates into approaching every student with high expectations in mind.

The NC Education Alliance survey reports that West Lumberton’s results encourage partnerships in the business community. Books & Beyond worked with the school to promote quality reading opportunities for all grades.

All the students are expected to make A’s. Children are most likely to perform well when teachers have high expectations, Clark said. Survey responses credit teachers as well as parents and members of the business community for providing the support needed to encourage student achievement.

Clark is a visible presence on campus. She tours classrooms, presents awards, and visits with students at the end of the day as they depart homeward on the bus. The school has received the Triple “S” Safe School Award multiple times in recent years.

Striving for excellence, and insisting on high standards is one way Clark works to turn around low-performing students. The large increase in grade-level proficiency, from just 49 percent in 1997 to 82 percent by 2001, is evidence of what can happen. Clark hints that further success depends upon keeping everyone’s sights set on the goals embodied in the school motto: “To Learn, To Think, To Achieve, and To Care.”

Cedar Grove Elementary

How can teachers encourage students to rise to the challenge of academic excellence? Principal Jerry Smith of Cedar Grove Elementary in Nashville tackles the issue with a “tri-fold partnership” that places equal responsibility with the school, the student, and the parents. A collaborative commitment to a long-term plan for improvement has paid off, Smith says.

A few years ago, only two-thirds of the children were performing at or above grade level. Proficiency ratings rose from a low level in 1997 to a proficiency level approaching 90 percent in five years.

Cedar Grove serves 260 county stu-

dents, from pre-K to fifth grades. More than 60 percent qualify for nutrition subsidies for breakfast or lunch. Smith piloted the effort to further improve academic achievement. He reported that the improvement was the result of wide participation and effort. According to responses to the North Carolina Education Alliance survey, instructional planning was key to enhancing the curriculum and encouraging improving. Smith identified “three R’s” as a means to better serve the needs of children striving to meet their potential.

The first R is research, intended to give better tools to teachers through workshops and seminars. The second R, recognition, places the focus on the plan and its progress. Reaching is the third R. This means implementing Cedar Grove’s instructional planning, termed by Smith as “workable strategies.”

Smith reported that the traditional “three R’s” of reading, writing, and arithmetic are central to successful instructional planning. Improvement, in his judgment, comes from a combination of factors: critical thinking and analysis skills, consistent reinforcement of important material, staff development, and openness to feedback.

A “lead teacher” functions as a direct link between the principal and teachers in order to keep communication open.

Tutoring programs and a focus on the fundamentals round out the curriculum. To better accomplish the tutoring, students are assigned to a staff member who supervises their studies in what Smith called a “study buddy” arrangement. A “reading buddies” program was also established to encourage parents to read to their children. Smith reported that special events have been implemented to promote and emphasize reading, and Cedar Grove is a daily participant in DEAR (Drop Everything And Read).

Testing concepts such as vocabulary are a top priority at Cedar Grove Elementary, as are supplementary items to strengthen the material used in core cur-



West Lumberton’s Juanita Clark receives the Safe School Award.

riculum areas. A formal agenda set by the school is designed to enhance daily communication between parents and the school.

Smith said student progress suffers without the three-part partnership. Shared accountability between the school, teachers, and parents is essential to fostering high expectations that will “produce consistent, positive, academic results,” Smith said.

But obstacles still remain. Cedar Grove Elementary serves a rural community hit hard by the economic downturn. Smith characterized the greatest challenge as “a lack of self-motivation among the students.” Attempts have been made to counter this problem “while facing the immediate challenges of [their exact] locations and social pressures.”

Like other schools in similar situations, Cedar Grove relies on the community as an important resource. Public agencies such as the fire and sheriff’s department also volunteer services and resources for the school. Smith highlighted their presence as particularly positive role models, who can establish a bond before the children are old enough to get into trouble, or break the law.

Cedar Grove Elementary achieved “exemplary” status from the Department of Public Instruction and North Carolina Public Schools in 2001 and 2002. It was one of only 20 public schools in North Carolina to be selected as a “what works” school.

Advances in the school have been a concerted effort of parents, teachers, and students, along with a long-term plan for the school, Smith said.

Success can be built and maintained for many years to come by using teamwork, Smith said.

CJ

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Course of the Month

Two UNCG "candy" classes

Our selections this issue are from the University of North Carolina at Greensboro, and they came to CM's attention by way of a student columnist. John Russell writes a column entitled "Neurotica" for the UNCG student newspaper, the *Carolinian*, in which he has held forth on a wealth of topics.

This year, for instance, he has written about using a urinal and how he "noticed that the guy to my right had finished peeing" and was "stretching and jiggling his willy [which] really got me going." Another time he recounted in great detail his experiences "attending workshops on kink and anal sex." He also hailed "Dominant-Submissive Relationships," which even though the idea "smacks of slavery," they "work just as well, if not better" than monogamous marriage, leaving him "beginning to think I might stop looking for that special someone and start searching for that special submissive." In another column he combined an elegant apologetic for sex toys (they "expand the landscape of our sexuality," "are not crutches [but] are wings," and therefore "[i]t's silly be [sic] embarrassed to go to a sex shop") with discussions of several in detail (the clinical term "butt" occurs with some frequency).

The point is, when someone of Russell's range recommends college courses, as he did in his May 5 column, it behooves CM to pass those recommendations along. Especially when they come with Russell's additional approval as being excellent for someone "in search of the perfect 'candy' class" and that "[c]lasses like these are the reason I'm still in school" (he also adds that "I can honestly say that I want to be the teacher's pet).

Here are two UNCG courses that got Russell's squeal of approval:

HIS 359: SEXUALITY IN HISTORICAL PERSPECTIVE

Survey of the history of sexuality since the 17th century, with emphasis on America. Topics include agrarian sexual patterns, the impact of industrialization, Victorianism, birth control, the effects of Freud, and the 20th century "sexual revolution."

HIS 530: HISTORY OF SEXUALITY: SELECTED TOPICS

Prerequisite—for undergraduates, HIS 359 or the permission of the instructor. May be repeated once for credit when topic varies.

Intensive exploration of critical themes in the history of sexuality, including such issues as fertility control, sexual identity, and sexual politics.

Obviously the best thing about HIS 530 is it can be repeated for credit. Undergraduates who don't obtain the "permission of the instructor" (e.g., prudes) must take HIS 359 to get in.

As the description for HIS 359 is a bit dry, here is how Russell described it. HIS 359 "takes a look at the changing ways in which people have thought about sexuality throughout history," he wrote. "The course covers the emergence of homosexuals as a distinct group, the impact of Freud's theories, birth-control, and the AIDS epidemic, among other topics. I'm taking 359 this semester and for a whole week I got to read about flogging. I love school!"

CJ

Conservatives decry 'a classic Marxist rant'

UNC-Chapel Hill's Summer Reading Choice Fulfills Moeser's Goal of Being 'Provocative'

By JON SANDERS

Assistant Editor

Just as Chancellor James Moeser pledged last fall before the National Press Club in Washington, D.C., the University of North Carolina-Chapel Hill's latest selection for its Summer Reading Program has indeed been "provocative."

The book, by Marxist social critic Barbara Ehrenreich, is *Nickel and Dimed: On (Not) Getting By in America*. According to the program's web site (www.unc.edu/srp), the book is "Ehrenreich's account of what it is like to make a living on the salary of a low paid or 'unskilled' worker. Taking jobs as a waitress, cleaning woman, nursing home assistant and Wal-Mart employee in three different cities across the nation, Ehrenreich struggled to make ends meet. Her account of these jobs, the generous and gutsy people she works with and their desperate struggles for survival on minimum wage is direct, vivid, and engaging."

A conservative student group called the Committee for a Better Carolina (CBC) took out advertisements in *The Daily Tar Heel* and *The News & Observer* of Raleigh urging freshmen to "take a look at the facts" about the book. The ads cite several passages from the books that disparage Latinos, Christians, "Minnesota Anglos," conservatives, overweight people, and the general public, and other passages where Ehrenreich appears to wish death on people.

Nickel and Dimed "is a classic Marxist rant that employs a combination of emotional appeals and stereotypes to convince readers that businesses and the wealthy have conspired to make 'wage slaves' out of millions of Americans," the CBC ad states. "Ehrenreich is even kind enough to inform readers that the 'appropriate emotion' to feel after reading the book is 'guilt' and 'shame' for partaking in a capitalist system that exploits workers for the purpose of making a profit (p. 220-221)," it states.

"Nobody I talked to thought this would be a controversial book," UNC-CH Provost Robert Shelton told *The N&O*. On the whole, UNC-CH officials expressed welcome for the controversy for stimulating the very discussion for which they said the selection aimed from the beginning.

UNC-CH faculty Chairman Judith Wegner wrote in the *Chapel Hill News* that the "book is chosen as a means of engaging in discussions in which multiple viewpoints are expressed and explored," and even though the book offers only "one person's experience," the incoming "students will be asked to bring their own experiences to bear in evaluating the picture presented there."

Senators get involved

Several legislators have criticized the choice for lacking "literary or scholarly substance and intellectual balance." On July 8, 10 N.C. senators sent a letter, coauthored by Sen. Hamilton Horton, R-Winston-Salem, to Moeser asking for a meeting with the book selection committee to "understand from them just what motivated the choice, to the end that we might help defuse any misunderstanding and explain the university's choice to our constituents."

Moeser granted the invitation the senators requested in a most "prompt and cordial reply," Horton told the *Herald-Sun*. At the meeting, held July 17, the senators ex-

Excerpts from *Nickel and Dimed: On (Not) Getting By in America*

I figure that if I can earn \$7 an hour ... I can afford to spend \$500 on rent or maybe, with severe economies, \$600 and still have \$400 or \$500 left over for food and gas... this pretty much confines me to flophouses and trailer homes... Still, it is a shock to realize that "trailer trash" has become, for me, a demographic category to aspire to.

So I decide to make the common trade-off between affordability and convenience and go for a \$500-a-month "efficiency" thirty miles up... a sweet little place — a cabin, more or less, set in the backyard of [a] converted mobile home...

The next piece of business is to comb through the want ads and find a job. I rule out various occupations for one reason or another: hotel front-desk clerk... involves standing in one spot... Waitressing [left] me bone-tired when I was eighteen... Telemarketing... can be dismissed on the grounds of personality. This leaves certain supermarket jobs...

Winn-Dixie... turns out to have a particularly onerous application process... Apparently I ace the interview, because I am told that all I have to do is show up in some doctor's office tomorrow for a urine test... The wages Winn-Dixie is offering — \$6 and a couple of dimes to start with — are not enough, I decide, to compensate for this indignity...

Three days go by... to my chagrin, no one from the approximately twenty places at which I've applied calls me for an interview.

(Pages 12-15)

Senators' July 8 letter to UNC-Chapel Hill Chancellor James Moeser

Dear Chancellor Moeser:

You are probably aware of criticism of the choice of Nickel and Dimed as the summer reading selection for incoming freshmen. Before the situation becomes totally politicized, perhaps it would be helpful if we here could be made aware of what lay behind the choice of this book and the good sought to be attained by this selection.

Our understanding is that a committee made a selection after weighing a number of possible books. Would you let us know their names and their positions? And would you also arrange a meeting with us so that we might understand from them just what motivated the choice, to the end that we might help defuse any misunderstanding and explain the university's choice to our constituents?

Specifically, we would wish them to address why, of the five books selected in as many years, only one (Approaching the Koran) was written by a scholar. The others are by journalists and polemicists. None could be classified as great literature; none could be considered part of the "canon."

Certainly we applaud the desire to stretch the minds of entering students by introducing them to unaccustomed views but we wonder if your committee could address whether entering students might not be introduced to works of great literary or scholarly substance and intellectual balance.

I would hope that we could understand the university's position better as a result of meeting with your committee.

With best wishes we look forward to your response,

Yours very truly,

Ham Horton
Virginia Foxx
James Forrester
Andrew Brock
Stan Bingham
Phil E. Berger
Robert C. Carpenter
Richard J. Stevens
Austin Allran
Robert M. Pittenger

pressed concern over whether conservatives and conservative thought are tolerated at UNC-CH, whether the university should assign "demeaning" books to new scholars rather than classic literature, and why UNC-CH would, if it sought to address an issue of great importance, does it continue to assign only one obviously biased approach to the issue (a concern that heightened back to last year's *Approaching the Q'uran* controversy).

Moeser told them, "I think your criticism will have an impact on our thinking."

Other legislators, such as Sen. Ellie Kinnaird, D-Carrboro, spoke in favor of the selection. Kinnaird was among a dozen legislators joining UNC-CH students in a news conference July 15 in the General Assembly supporting the selection. "The program has created exactly what it had intended — discussion, debate, and a lot of political activism," Kinnaird said, adding that "the purpose has been fulfilled."

Kinnaird also was the only Democrat attending the meeting at UNC-CH.

Rep. Jennifer Weiss, D-Cary, said that "maybe the lives of workers and working families in this state will be better because you're reading this book."

An incoming freshman, Anne Marsh Treadwell, said the book opened her to "a

world I had never seen before" and that she "was amazed by the way that some people live, even in an industrialized nation such as America."

The press conference also featured a number of housekeepers from UNC-CH, who held signs reading "Ask us about Being Nickel and Dimed." One housekeeper, Bill Shuler, announced, "The subject matter is us! We are nickel and dimed. We are lower paid than Wal-Mart."

In late June, UNC-CH announced it would be cutting 24 to 28 housekeepers because of budgetary concerns.

Meanwhile, CBC announced its new web site, www.CarolinaBlueprint.com, to present its case on the debate. The site says that despite UNC-CH saying the program is to stimulate a discussion and critical thinking on the issue, it still presents only Ehrenreich's socialist viewpoint.

As of press time, the CBC's site was not acknowledged by UNC-CH site under its "Related Events" section link to "Websites." The only options it gave were Ehrenreich's website, NickelandDimed.net, an audio report on *Nickel and Dimed* that aired on KPLU, National Public Radio, Sept. 27, 2002, and an NPR report by Noah Adams entitled "One Town, One Job: A Profile of Low-Wage America."

CJ

Education Dept.'s Office of Civil Rights Issues 'Further Clarification' of Title IX

By JON SANDERS

Assistant Editor

Several months have passed since a federal commission urged changes to how the government enforces Title IX of the Education of Amendments. Several years have passed since the Education Department's Office for Civil Rights last issued a Clarification of OCR's policies to determine compliance with the measure. On July 11, in a "Dear Colleague" letter, OCR issued what Gerald Reynolds, assistant secretary for civil rights, termed a "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance."

In February 2003, the Secretary of Education's Commission on Opportunity in Athletics released a report entitled "Open to All: Title IX at Thirty." The report praised the legislation but castigated OCR. Chief among its criticisms is that OCR was unclear in its policy interpretation released in 1979 that created a three-prong test of compliance. Other criticisms were that its field office gave conflicting information regarding compliance, that the legislation was not implemented strongly enough, and that confusion from the 1979 interpretation and the 1996 Clarification led to many men's teams being dropped. Furthermore, the report found, OCR doesn't properly enforce its three-prong test.

The three prongs of the compliance test are these: (1) the "substantially proportionate" test, whether the male/female ratio of athletes is similar to the male/female ratio of enrollment; (2) the "history and continuing practice" test, whether the university can demonstrate a history and continuing practice of expanding athletic programs to the under-represented gender; and (3) the "fully and effectively" test, whether the university is meeting fully and effectively the athletic interests and abilities of the under-represented gender. To be in compliance under Title IX, the university need only meet one of those three tests.

The Reynolds "Further Clarification" says the three-prong test has "worked well," but that appears counter to the commission's report. Along with the criticisms above, the report found that OCR has let it be known it favors the "substantially proportionate" test as the only "safe harbor" standard to meet to avoid further OCR scrutiny. The report stated, "If a school claims it is in compliance under one of the other tests, the Office will scrutinize that claim more carefully since compliance under either of these parts is not a safe harbor."

Reynolds did address that issue in the "Further Clarification." Because the "transmittal letter accompanying the 1996 Clarification... described only one of these separate three prongs — substantial proportionality — as a 'safe harbor' for Title IX compliance," Reynolds wrote, many schools were led "to believe, erroneously, that they must take measures to ensure strict proportionality between the sexes. In fact, each of the three prongs of the test is an equally sufficient means of complying with Title IX, and no one prong is favored."

Reynolds wrote that "OCR encourages schools to take advantage of its flexibility, and to consider which of the three prongs best suits their individual situations... Each of the prongs is thus a valid, alternative way for schools to comply with Title IX."

Backdoor compliance through cutting teams

The "Further Clarification" also addressed the issue of teams being eliminated as a backdoor way to compliance. The issue has been a sore one for foes and athletic victims of OCR's Title IX enforcement, especially with regard to its public appearance of favoring only substantial proportionality as a "safe harbor" from OCR scrutiny.

As the Independent Woman's Forum's Jessica Gavora wrote in the *Washington Post* in 2001, "A 1997 NCAA gender equity study showed that more than 200 men's teams and 20,000 male athletes disappeared from the ranks of America's colleges between 1992 and 1997. A 1999 study by the General Accounting Office found that men's opportunities had declined by 12% since 1985. Meanwhile, during the same period, the number of boys playing high school sports increased by about 400,000."

By 2002, according to Christine Stolba of the IWF, "more than 80,000 slots for male athletes on intercollegiate

teams have disappeared from college campuses." On May 9, 2002, the *New York Times* reported that a General Accounting Office study found that "more than 170 wrestling programs, 80 men's tennis teams, 70 men's gymnastics teams and 45 men's track teams have been eliminated."

Reynolds did not address the enormity of the issue of teams being eliminating, writing instead that "OCR hereby clarifies that nothing in Title IX requires the cutting or reduction of teams in order to demonstrate compliance with Title IX, and that the elimination of teams is a disfavored practice." The latter phrase was suggested by the commission's report.



Gerald Reynolds, U.S. Dept. of Education assistant secretary for civil rights

More to the heart of the matter, Reynolds wrote that "Because the elimination of teams diminishes opportunities for students who are interested in participating in athletics instead of enhancing opportunities for students who have suffered from discrimination, it is contrary to the spirit of Title IX for the government to require or encourage an institution to eliminate athletic teams."

The "Further Clarification" also included:

- a pledge to "aggressively enforce Title IX standards" (suggested by the commission)
- a continued allowance of "private sponsorship of athletic teams" (the commission suggested clarifying the rules governing private sponsorship)
- a pledge for "clear and consistent implementation of Title IX," such that "OCR will ensure that its enforcement practices do not vary from region to region (also suggested by the commission)
- a reaffirmation of OCR's "commitment to equal opportunity for girls and boys, women and men" (also suggested by the committee).

News of the "Further Clarification" was welcomed by The National Women's Law Center, which just last year was warning that "the Bush Administration may be poised to attack Title IX!" In a prepared statement, Marcia D. Greenberger, NWLC copresident, declared the Reynolds letter "a huge victory for women and girls everywhere."

Greenberger also complained that "[w]omen's and girls' participation opportunities, operating budgets and recruitment and scholarship dollars are still vastly lower than men's." She also decried a lack of enforcement of Title IX, which she blamed on "intense attacks on Title IX athletics policies, and the unfortunate diversion of Department of Education resources and attention in considering weakening the policies." She warned the Education Department that "[w]e will be actively monitoring the Department's efforts to enforce the law to ensure that the rights of young women everywhere are fully protected."

Greenberger also hailed Title IX's effect on women's athletics participation. Since Title IX's passage in 1972, she wrote, "women's participation in sports has increased by more than 400% at the college level and more than 800% at the high school level. Title IX has been a real example of the 'Field of Dreams' — build it, and they will come. As a result, the nation's young women and girls are getting more opportunities to play sports and enjoy the benefits that flow from those opportunities, including improved health, higher levels of self-esteem, better grades, avoidance of risky behaviors, and preparation to succeed in the workforce."

The "Further Clarification" letter is available online at www.ed.gov/offices/OCR/title9guidanceFinal.html. The commission report is at www.ed.gov/pubs/titleixat30/title9_report.doc.

Supreme Windfall For Conservatives

Conservatives should be heartened by the touchy-feely miasma of the Supreme Court's recent decision of *Grutter v. Bollinger*, which allows universities to consider race in admissions as an element of diversity. Here's why:

The majority opinion contains salient reasoning for a greater campus presence for conservatives. The court downplayed the original justification for race-preferential policies, "remedying past discrimination" (p. 15), in favor of the educational benefits of diversity. By defining diversity broadly, rather than narrowly constricting it to race, however, the court has also made the case for more equitable campus treatment of conservative students, faculty, thinkers, and ideas.



Jon Sanders

The court held that the University of Michigan Law School, and by extension all universities, has "a compelling interest in attaining a diverse student body" (p. 16). It also reaffirmed the educational value of a "robust exchange of ideas" (p. 17) on campus. It praised the law school for considering "diversity in ways broader than race" (p. 28), i.e., "all pertinent elements of diversity" (p. 29).

Conservatives should embrace this laudable distinction by the court, that diversity is broader than race and incorporates ideas, too. Before *Grutter* such distinction was scarcely made outside conservative circles. Indeed, a host of scholars and social critics have found that university communities tend to limit expression of conservative thought, tolerate acts by other students to quell conservative participation in campus speech, hire faculty that are almost exclusively on the political Left, and bring in outside speakers that are also disproportionately leftist.

Just a few examples would, according to the reasoning in *Grutter*, be enough to question universities' commitment to diversity. Suffice it to say that on many campuses conservatives are given only "token" (p. 21) representation in what ought to be a "robust exchange of ideas." Under *Grutter*, however, this tokenism is a practice that simply must be stopped by any university that avers "diversity is essential to its educational mission" (p. 16). Today a university cannot consider diversity "essential" if it is essential in respect to only one of the "elements of diversity." It follows, then, that universities citing the educational benefits of diversity to justify considering race in admissions must also have a "compelling interest" (p. 16) in ensuring that conservatives have full access to the campus debate.

Note that actual *proof* of the alleged tokenism do not matter in the court's eyes. What matters is that conservatives perceive such tokenism; i.e., they "feel isolated or like spokespersons" (p. 6) and denied "[e]ffective participation" (p. 19) because the campus is not "visibly open" (p. 20) to them. The court in its wisdom found that for the educational benefits of an element of diversity to take effect, enough individuals representing that element must be present — not just to communicate the "viewpoint" (p. 20), but also to demonstrate to those with the viewpoint that the campus is perceivably "inclusive" (p. 20). The court has instituted an Othello standard; universities must give any isolated-feeling element of diversity the "ocular proof" that they are welcome. So there must be a noticeable "critical mass" (p. 5) of conservatives on campus for their element of diversity to be "meaningful" (p. 5) in terms of their educational contribution.

What constitutes that critical mass? Again, the judicial standard is based on feeling: "'critical mass' means 'meaningful numbers' or 'meaningful representation'... a number that encourages [conservatives] to participate in the classroom and not feel isolated... [but] there is no number, percentage or range of percentages that constitute critical mass" (pp. 5-6). That having been cleared up, note that without a "critical mass" of conservatives on campus, the exchange of ideas will fail to be robust. And that would be, per *Grutter*, unconstitutional.

Bats in the Belltower

Commies, Cookies 'n' Cream — An Econ Professor's Dream!

A news article from Storm Lake, Iowa, tells of two professors' giddiness at meeting one of the worst despots in the world. According to the June 5 *Omaha World-Herald*, Buena Vista University assistant professor of mathematics Tim McDaniel and assistant professor of economics and finance Eric Eller traveled with an Iowa trade delegation to Cuba in May to plan a student trip there next year. The *World-Herald* reported that the professors met and had cookies and ice cream with Fidel Castro.

Afterward, Eller demonstrated a stoogeworthy capacity for euphemism, noting, "It was crazy sitting around the table eating ice cream with one of the most historic people of the past century."

Indeed, few are more "historic." Only Josef Stalin, Adolf Hitler, Pol Pot, and a handful of others could hold a candle to him. But they probably didn't even like ice cream.

Criticizing propaganda is risky

Speaking of Hitler, that very historic figure of the past century was recently referenced by two Central Connecticut State University professors. The historic-figure name-dropping occurred after Connecticut Association of Scholars President Jay Bergman criticized a slavery-reparations conference as "nothing more than an exercise in propaganda: Not one of the presenters expressed the reasonable opinion, which students attending the seminar were entitled to hear, that reparations are a bad idea."

Incensed, CCSU Africana studies program Chairman C. Charles Mate-Kole and associate professor of anthropology Evelyn N. Phillips issued a statement charging Bergman with racism, specifically "blind rage of hatred against black skin," among other things:

"The protests against reparations stand on the same platform that produced apartheid, Hitler, and the KKK. Unfortunately, many of these individuals clothe themselves in academic gowns and hold their 'intellect' as the standard bearer of enlightenment. Bergman and his colleagues' cloaked daggered [sic] statements suggest that blacks do not have the intellectual capacity to decide what is best for them and how injustices should be remedied. It is unfortunate that the blind rage of hatred against black skin holds so many minds captive both in academic gowns and pinstripe suits, as well as white hoods."

Criminy, guys, have a cookie.

Steal this report!

Here's a quiz on the priorities of the modern university. The *Chronicle of Higher Education* recently reported on the theft of nearly 500 information packets containing a report self-published by a recent graduate, Scott M. Dillon, and placed in students' mailboxes at Indiana University School of Law. The report details how Indiana uses separate, lower standards to evaluate minority applicants than those used for white applicants. The packets were stolen overnight.

Here's a quick pop quiz to test your ability to guess how Indiana reacted to the theft. Using the lead sentence from the May 27 *Chronicle* story about the theft,

just fill in the blank with the appropriate phrase describing the law school's response:

"Officials at Indiana University School of Law at Bloomington _____ after a recent graduate complained that someone had stolen copies of a report that he was trying to distribute to prove that the school was lowering its standards for minority students."

A. strongly defended free speech and recommitting itself to upholding academic freedom
B. hastily assembled a teach-in on the subject of unpopular speech and academic freedom

C. issued calls from the chancellor and department heads to make students aware of the critical importance of free speech and dialogue

D. defended their affirmative action efforts (The answer is — surprise! — D).

A tale full of silly fury

And then there's this, about the last meeting of the year of the University of California at Riverside's student senate — which is also the last chance for student leftists to avail themselves of student funds and engage in other self-important shenanigans at other students' expense. The UCR *Highlander* report (www.highlander.ucr.edu/article.php?artnum=2250) described two such last-ditch efforts:

- An organization called Que onda Queers asked for \$12,000 for "safety devices." Those included "cameras, camcorders, tapes, tape recorders and security to prevent physical retaliation." One problem for the group, as a student senator (and potential aggressor who should be monitored) pointed out: there was only \$10,000 left. This set off a heated debate over whether there were other resources to be tapped (there weren't), and naturally the Que onda Queers became quite offended at their harsh treatment. A senator tried to explain the budgetary problem to Que onda Queers thus: "We're not going to discriminate. We treat you like s____. We're going to treat everybody like s____." The senators finally voted over \$3,000 to the group.

- The senate also approved a mural to be placed on campus, but that provoked controversy, too. As reported in the *Highlander*:

"I see some pilgrim invaders here," said Elisa Haro, academic affairs director. "It kind of reminds me of my colonization, and I don't like that."

The artist of the mural said that the pilgrim invaders were meant to be Shakespearean actors and that he would try to make that more clear.

Other concerns with the mural included the depiction of white cranes, which the senate demanded be changed to color cranes.

They were also concerned with the lack of a same sex couple depicted, which the artist agreed to add. The senate voted to approve the mural in light of the adjustments being made.

Readers are excused for wondering which Shakespeare play would have actors in dress resembling "pilgrim invaders." CJ

Supreme Court Fails to Clarify Race-Preferential Admissions

By JON SANDERS

Assistant Editor

RALEIGH

On June 23, the Supreme Court finally ruled on racial preferences in college admissions. The court's rulings in *Gratz v. Bollinger*, on preferences used by the University of Michigan, and *Grutter v. Bollinger*, on preferences used by its law school, however, brought little clarity on the issue.

In *Gratz*, the majority of justices ruled against preferences. Michigan's admissions policy used a "selections index" that awarded points to those with "membership in an under-represented racial or ethnic minority group." The majority said that was "not narrowly tailored to achieve [its] asserted compelling interest in diversity."

In *Grutter* the court upheld the use of race in the admissions decisions as one of the "pertinent elements of diversity," deciding that the law school "has a compelling interest in attaining a diverse student body."

The majority favored the law school's admissions policy because it was not demonstrably a quota system as the undergraduate school's was. Representatives of the law school argued that it needed a "critical mass" of minority students on campus, which they defined as: "'meaningful numbers' or 'meaningful representation,' ... a number that encourages under-represented minority students to participate in the classroom and not feel isolated" or "spokesmen for their race." Nevertheless, "there is no

number, percentage, or range of numbers or percentages that constitute critical mass"; they "did not quantify critical mass in terms of numbers or percentages." Later the law school explained to the court that under a race-blind system, "under-represented minority students would have comprised 4 percent of the entering class in 2000 instead of the actual figure of 14.5 percent."

Elsewhere, the court's opinion rests on such phrases (emphasis added) as the "[e]ffective participation by members of all racial and minority groups," the need for the process to be "visibly open to talented and qualified individuals of every race and ethnicity," which it cannot be "with only token numbers of minority students" rather than "meaningful numbers," and a respect for "nuanced judgment" which will not "unduly harm nonminority applicants."

In upholding Michigan's use of race in admissions sans quantification of "critical mass," the court nevertheless acknowledged that "[e]nshrining a permanent justification for racial preferences would offend" a "core purpose of the Fourteenth Amendment." The majority suggested "sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity". The majority also gave its own, expected sunset: "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." CJ

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Look for *Investor Politics* in bookstores or at www.TempletonPress.org.

Of 'baloney' and critical thinking in college

'Critical Thinking' Often Means Not Questioning Professors' Assumptions

By JON SANDERS

Assistant Editor

Next to "diversity," used as a synonym for discrimination by race, a favorite euphemism at universities today is "critical thinking." The usual occasions for its use, however, are rather ironic — to stymie rather than stimulate critical thinking.

The university itself is generally regarded as a place to stimulate critical thinking. Along with, and in many minds superior to, preparing students for their respective fields, universities are expected to teach students how to think critically and by doing so prepare them to be better citizens. In other words, it goes without saying that college courses are to teach students how to think critically about the subject matter.

Or it ought to go without saying. When it is said explicitly, then — as is the case for any unnecessary statement of defense — it invites skepticism. After all, why would one feel compelled to explicate what is already expected? It's not as if classes without the phrase are looking to teach *uncritical* thinking.

Yet too frequently we find academics going to rhetoric well of "critical thinking" to justify their courses. Often, and not coincidentally, they're frivolous or heavily politicized courses. Often the same folks who hide behind the verbal shields of "tolerance" and "diversity" to denounce intolerance among conservatives and try to get Christian student organizations to eradicate their beliefs from their organizational documents (see February 2003 *CAROLINA JOURNAL*, p. 12) are the same ones hailing critical thinking that students dare not question.

For instance, the University of North Carolina at Chapel Hill is revising its curriculum, and one of the revision subcommittees is on "U.S. Diversity." This subcommittee recommended in January 2001 that "[C]ourses that meet the US diversity requirement should impart skills of analysis and critical thinking that can productively be applied to the study of cultural differences far beyond the US context." As they explain, the courses "must consistently engage... at least two, and possibly more, of the conceptions of diversity," those being "race, ethnicity, gender, sexuality, class,

region, and disability." You will note no allowance for questioning those "conceptions of diversity." Courses also "must consistently challenge students to move from what they know — or think they know — about other peoples to question those assumptions and preconceptions;" thus questioning only the students' own "assumptions and preconceptions." Finally, courses "must consistently address issues of diversity in relation to questions of inequality, justice and power... we want students to explore the further implications of living in a diverse culture" — making no allowance for questioning those Marxist "questions" of diversity or the professors' conception of "a diverse culture."

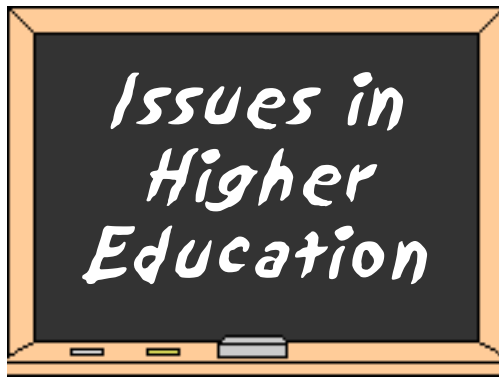
The apparently necessary justification of encouraging critical thinking also features in several of *CAROLINA JOURNAL*'s Course of the Month selections, UNC-CH's Summer Reading Program, and numerous other "studies" class descriptions.

Baloney detection

Suppose you were a university student looking to hone his critical thinking skills, but you've grown syllabus-shy after having been severely disappointed by other classes promising to encourage your critical thinking skills — apparently by, as you later found out, showing you pornographic films and assigning you to "deconstruct" Super Bowl commercials according to their portrayal of women. What could you do?

Well, you could consult the university library, or better yet, and if you're lucky enough, you could consult with professors you know to have great experience at actual critical thinking. You could also check out "The Baloney Detection Kit," by Michael Shermer and Pat Linse of the Skeptic Society (www.skeptic.com), which might also serve you in future courses.

The Baloney Detection Kit builds on the late astronomer Carl Sagan's "Ten Tools for Baloney Detection," all sound principles for healthy skepticism. They include seek-



ing independent confirmation of the facts presented, avoiding being impressed from arguments based on authority (a prevalent campus trap), crafting several hypotheses while avoiding personal identification with them, seeking quantification,

minding Occam's Razor, and checking whether a proposition is falsifiable.

The latter (Sagan's No. 9) is another prevalent trap on campus. See, for example, literary critics' idea that language is too imbued with cultural, political, gender, racial and other prejudices for any text to mean what it appears to mean, or the global warming theorists' readily accepting as proof of their theory any proposed meteorological event, including global cooling. There is another name for the unfalsifiable theory: the Procrustean bed, named after that unpleasant fellow of legend, Procrustes, whose joy it was to waylay travelers and tie them to his bed, which was truly one-size-fits-all. If the traveler was too short, he was stretched till he "fit," and if he were too tall, his dangling appendages were lopped off — an apt description of what the proponents of an unfalsifiable theory do to facts.

The Baloney Detection Kit also provides Shermer's 10 questions for baloney

detection, which discusses such things as confirmation bias (in which evidence counter to the theory are rejected), the need to question how the theory fits with "what we know about the world and how it works" (the Marxists' bane), and the importance of asking whether the theorists' "personal beliefs drive the conclusions, or vice versa."

Particularly useful is the section on "How Thinking Goes Wrong," which lists 25 fallacies to avoid. These are subdivided into categories of "problems in scientific thinking," "problems in pseudoscientific thinking," "logical problems in thinking," and "psychological problems in thinking." As one would expect, this section discusses such problems as that of observation changing the observed, anecdotal evidence, the burden of proof, post hoc argumentation, ad hominem argumentation, circular reasoning, reductio ad absurdum, and ideological immunity.

The Baloney Detection Kit also lists "Eight Sample Syllabi: How to Teach a Course in Science & Pseudoscience," which includes a course offered in North Carolina. Entitled "Skepticism, Pseudoscience, & the Scientific Method," the course is said to be "designed to improve critical thinking skills" — but the course description goes further: "In particular, it is the goal of this course to encourage us to think of all the ways in which we can be fooled by others and fool ourselves."

The course is taught by Dr. Eric Carlson at Wake Forest University. CJ

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Town and Country

Medicaid help for counties

A bill that would eventually reduce by nearly one-third the amount of dollars counties are required to pay for Medicaid expenses has passed a House committee.

However, with the days dwindling in this year's legislative session, it may not become law this year, the *Sun-Journal* of New Bern reported.

The bill, which passed the House Ways and Means Committee on July 9, would save counties \$246 million by fiscal 2009-10, according to a legislative fiscal analysis.

"It's a rare chance for the legislature to give relief to the property taxpayers," said Rep. Patrick McHenry, R-Gaston, who sponsored the bill.

Specifically, the bill would shift the counties' cost of paying long-term-care Medicaid benefits to the state. McHenry said those benefits generally make up about one-third of the counties' Medicaid costs.

McHenry said during his campaign he looked into why property taxes were high in Gaston County. "Part of that is unfunded mandates from the state," McHenry said. "A major piece of that is Medicaid expenses."

McHenry said, when fully implemented, the proposal would save Gaston County taxpayers about \$4 million a year.

The bill has a long way to go before it becomes law. It will get at least one more committee review in the House before it goes to the floor. If the House passes the bill, it will then go to the Senate.

Reform of animal-control laws

State House Cospeaker Jim Black has pledged to push for a commission to reform animal control laws that have caused a statewide euthanization rate more than double the national average, the Associated Press reports.

Unlike a group created last year that never met, the new commission will hold hearings and propose legislation, said Black, D-Mecklenburg.

"If there are better ways of doing things, we need to uncover them," Black said. "I'm going to see that this receives attention."

The *Charlotte Observer* recently reported that the state euthanizes 35 to 40 animals per 1,000 people, while the national average is 16. More than 80,000 dogs and cats were killed last year in shelters across the 15-county Charlotte region.

Other places across the country are reducing euthanasia rates, primarily through aggressive spay-neuter programs that target low-income neighborhoods. Nationwide, 80 percent of animal control calls originate in poorer neighborhoods.

Counties in the Charlotte region and many other parts of the state spend no public money on sterilization.

Shelters across the region are crowded, and every county except Mecklenburg and Burke puts animals to death in gas chambers, not by lethal injection, which national groups regard as more humane.

Officials in the counties that use gas said they're not planning to switch methods. *CJ*

Wilson Gives Utility Late Fees to Nonprofits

\$6 million has gone to cultural and social service groups in 14 years

By DONNA MARTINEZ

Associate Editor

RALEIGH

A Wilson-area taxpayer group is calling for a review of a controversial City of Wilson grant program that has distributed about \$6 million in utility bill late fees to nonprofit cultural and social service groups during its 14-year history.

The fee and funding mechanism were created by the Wilson City Council in July 1989 as a way to aid groups requesting financial assistance from the city. Critics say the money should be used to fund key city services used by all residents, rather than narrowly focused organizations they believe should look for help from businesses and individuals.

"We've been fighting that for years," said Bill Biddle, president of the 600-member Wilson County Taxpayers Association. "That money could be used to reduce electric rates or go into the general fund," he said. "We object to funding them at all. That money should go back to the people."

City council determines recipients

The city council decides who receives the money and the procedures are straightforward, said Harry Tyson, who oversees the grant program as part of his responsibilities in the Wilson city manager's office. A \$10 fee is assessed on electric bills paid late by Wilson's more than 31,000 electric customers. At the end of each fiscal year, the city averages the fees collected over the previous three years, and gives out 95 percent of the amount to council-approved groups ranging from the Arts Council of Wilson to an after-school backyard wrestling activity that received \$4,100 five years ago. The city keeps a portion of the funds for the council's discretionary use.

More and more, local governments around the country are looking for new ways to support nonprofits, and the Wilson late fee is an example of trying to shelter the expenditures from the uncertainties of local budgets, said Steven Tepper, deputy director of Princeton University's Center for Arts and Cultural Policy Studies. "These alternative systems usually don't get reviewed every year. In general, it does escape public scrutiny," he said.

Tepper said he doesn't know of any other program like Wilson's, calling it a "pretty creative" approach. Because it's so unusual, he said it's also more vulnerable to rigorous questioning. Tepper said he believes the debate is legitimate over how the program works and who receives what, and that those who make and receive the grants shouldn't consider the money an untouchable revenue stream.

"The Wilson funding scheme — the late fee — is different than other kinds of taxes like hotel-motel taxes where the organization bringing in the money is related to the one receiving it," said Tepper, a 1989 graduate of UNC-Chapel Hill who served as the executive director of the university's bicentennial observance in the 1990s. "It's doing something that has no direct link from the generator of the fee to the recipient of the fee," he said.

Until last year, Wilson sought out applicants. Any nonprofit could apply for funding by completing a grant application, and as many as 80 groups did so each year. But Tyson said, the applications created headaches for the council. "Council members were lobbied over this money more than anything else. Groups would bring children and they'd get upset when they didn't get money," he said. To take the pres-



The Imagination Station in Wilson received \$75,000 a year from the late fee.

sure off the council, the city decided to stop actively seeking applicants and, instead, to predetermine which groups receive the grants. Eight have been selected. Each receives a set percentage of the total pot each year, with a dollar maximum also in place. For example, the Arts Council of Wilson receives the largest chunk of money each year — 20 percent — up to \$100,000. "It's a closed process now," Tyson said.

Biddle became aware of the grant program more than 10 years ago when he was plant manager for a business that produced soda bottles and other glass containers. The company was one of the area's largest users of electricity, Biddle said. When he investigated ways to reduce his employer's hefty electric bill, he discovered the city was collecting utility late fees, but giving the money to unrelated nonprofit groups instead of providing electric customers with a rebate or rate reduction. That angered him. After retiring in 1999, he began a crusade to end the program.

"I haven't been any more successful as a private citizen," he said. "I have made comments to city council, normally during public comments for the budget." He said it can be hard to get elected officials to listen to his group's position and, now and then, he wonders whether it's worth the trouble. "It's a circus when you go to a meeting with all these people asking for money."

List of recipients

In July, the city handed out the first quarterly installment of the predetermined grants for fiscal 2003-04. In total, the eight organizations will receive the following amounts: the Arts Council of Wilson (\$100,000); Imagination Station (\$75,000); Opportunities Industrialization Center (\$75,000); Wilson Community Improvement Association (\$75,000); Wesley Shelter (\$55,000); Flynn Christian Home (\$10,000); Hope Station (\$10,000); and Positive Change for Youth (\$10,000).

The grant program has been controversial for years, said James Johnson III, a Wilson city councilman since 1992 who is concerned about the program.

"Our budget is roughly \$170 million,

and this gets the most discussion of anything we do," he said.

Johnson is uncomfortable with the change to predesignated recipients even though he appreciates that the city was trying to make the process less contentious. He says he never felt pressured. "I look at the bottom line and use my common sense," he said of his approach to the grants and other council business.

Johnson wants to return to soliciting applications and reviewing them all, but with one important change. "This debate needs to take place during the budget period, not after," he said. "I'd like to have an open discussion about where this money is going."

Johnson said he believes shining more light on the program may also force the council to address what he views as a conflict of interest involving City Councilwoman Gwen Burton, who is also the finance director for Oppor-

tunities Industrialization Center, a grant recipient. OIC received its first grant check for \$12,660 in 1993. Since then, the amount has increased in all but two years, and in 1999, the organization's check jumped to \$75,000. Now that OIC is on the council's pre-approved

list, it is guaranteed 15 percent of the available dollars, up to a maximum of \$75,000 each year.

"Yes, I believe it's a conflict of interest for her to vote on funding her employer," Johnson said. What's more, he's told Burton of his concern but she counters that the city attorney says it's not a problem.

Burton's actions have others raising eyebrows as well. "I think it's a conflict of interest, yes it is," Biddle said.

Tepper is unequivocal. "Anybody who is a recipient of an organization's money shouldn't be voting on it. She should remove herself from that," he said.

CJ attempted to include Burton's perspective in this story. Two phone messages asking for comment were left with the person who answered Burton's OIC office phone. Neither call was returned.

Johnson is undeterred and plans to push for a re-evaluation of the grant program. "It's time for us to steer this car in a new direction," he said. *CJ*

"Anybody who is a recipient of an organization's money shouldn't be voting on it."

— Steven Tepper



Interstate 485 around Charlotte is the most advanced of the state's urban loop projects.

First time in 14 years for trust fund

Legislature Adds Road Projects

By MICHAEL LOWREY

Associate Editor

CHARLOTTE

For the first time in 14 years, the General Assembly has added to the number of the projects to be paid for through the Highway Trust Fund.

In 1989, the state increased the gasoline tax and fees to fund road construction. The additional tax revenues went to the newly created Highway Trust Fund. One-fourth of trust fund spending would go toward building urban loops. The extra taxes end when all urban loop and intrastate projects are completed.

The legislature also designated at the time urban loops and interstate routes to be built with trust fund dollars. The urban loop projects were:

- A 3.5-mile connector between Interstate 26 and U.S. 19-23-70 in Asheville. Existing roads would also be upgraded to current interstate standards.
- The 25-mile Northern Beltway in Winston-Salem.
- The entire 64-mile Charlotte Outer Belt (Interstate 485).
- A 39-mile portion of Raleigh's outer loop (I-540) from N.C. 55 southwest of Cary north and east to U.S. 64 in eastern Wake County. The remaining 31 miles of the loop were not listed as eligible for urban loop funding.
- A 42-mile beltway around Greensboro.
- A 20-mile bypass around Wilmington.
- The 16-mile Northwest and Northeast loop projects in Durham.

Progress on the projects has been mixed. The most advanced urban loop is I-485. The Charlotte outer belt will be 70 percent complete by the spring with all remaining work funded. The \$1.15 billion project should be completed in about 2010.

Raleigh's outer loop will extend from I-40 to U.S. 64 near Knightdale by 2006, with work on the remaining 10 funded miles scheduled to begin by 2008. Greensboro's loop also is advancing, with one-third of it scheduled for completion by the end of this year. Most of the remaining portions are scheduled to begin work by 2010. The total cost of the road is more than \$1 billion.

The situation is more mixed in Wilmington. Work on the north portion of the road has begun or will begin shortly. The southern half of the road, between U.S. 421 and U.S. 17 south of Wilmington, presents environmental challenges. The Department of Transportation hopes to begin work in 2009, though the timetable could be pushed back.

Community opposition and environmental concerns have severely delayed the Asheville, Durham, and Winston-Salem

loops. Fourteen years after the creation of the trust fund, construction has not begun on the three roads.

In Winston-Salem, a lawsuit has forced the state to conduct a new environmental impact study. Construction may begin on a portion of the road in 2006.

The DOT hopes to begin work on the \$270 million Asheville connector in 2008.

Opposition in Durham

While the Winston-Salem and Asheville projects have been delayed, they at least generally enjoy the support of local government. Such was not the case for the northern loop in Durham. Both the city and county of Durham opposed the state's proposal.

After negotiations, the state and Durham came to an agreement on an alternative routing. It includes upgrading existing roads, including some streets that will not be brought up to interstate quality. The original trust fund provision for Durham, however, specified that money would be available only for building new roads.

To allow the work to proceed, Sens. Wib Gulley, D-Durham, and Jeanne Lucas, D-Durham, offered a technical amendment to allow for urban loop money to use for the revised project. Sensing an opportunity, a number of other legislators introduced amendments making other projects eligible for urban loop funding.

The largest addition was a \$350 million, 28-mile portion of the Fayetteville loop. Funding was included at the request of Senate Majority Leader Tony Rand, D-Cumberland.

"We have now righted what I've always considered to be a wrong, and I'm delighted that we got it done," Rand said to the *Fayetteville Observer*.

While portions of the Fayetteville loop were already scheduled to be built with non-trust fund money, the shift is favorable to Cumberland County. Trust fund spending does not count against how much money a region receives through regular DOT programs. By shifting the road to the trust fund, Fayetteville will effectively receive more state road money.

The Greenville Southwest Bypass was also designated as an urban loop road. While the DOT's transportation timetable already included funds for right-of-way purchases in 2006 and 2007, through 2010 no funding was provided for actual construction. The total cost of the project is \$115 million.

Additional interchanges, bridges, or miles of highway were also added to the Raleigh, Greensboro, Wilmington, and Winston-Salem loop project.

cj

Local Innovation Bulletin Board

Impact Fees Increasing

Cities or counties charge developers thousands of dollars in impact fees for new houses they build. The fees, which typically are passed on to buyers, raise the cost of new homes.

The fees, which originated in Texas in 1987, now are used in 22 states. In Texas, cities can charge impact fees to build streets and extend water and sewer systems, but elsewhere they pay for libraries, parks, roads, schools, sewers and even community art projects.

In North Carolina, impact fees are generally allowed unless they would go to build new schools. Only Orange and Chatham counties have the authority to levy impact fees for school construction. Durham County, however, is considering imposing such a tax and taking its chances in court. The county also is seeking approval from the General Assembly for the fees, although strong opposition from homebuilders and real estate agents has stalled the measure.

New-home buyers also pay property taxes to retire bonds that paid for infrastructure projects benefiting existing residents, leading some observers to suggest that new-home buyers are being asked to pay twice.

Nationally, the fees are rising, too.

McKinney, Texas, officials, for example, will double impact fees by 2005 to \$3,700 per home — about \$2,000 less than the state maximum.

By contrast, fees for new homes in Pleasanton, Calif., exceed \$50,000 and help pay for parks, schools, public buildings, streets and low-income housing.

Existing residents say they shouldn't have to pay for newcomers. But many new-home buyers come from within the community, said Paul Cauduro, of the Home Builders Association of Greater Dallas.

A 1998 study by the Real Estate Center at Texas A&M University determined that if the median cost of new homes rose by \$1,000, 24,000 potential home buyers in Texas wouldn't be able to afford homes in that median price range. That number represents less than 1 percent of all potential home buyers in the state, says Gary Maler, the A&M center's associate director.

However, someone buying a

\$100,000 house pays the same impact fee as someone buying a \$400,000 in the same area — thus people in lower price ranges pay proportionately more.

Reported in the *Dallas Morning News*.

Non-Cities

As development builds outside cities, areas that have no legacy of municipal government are thriving without becoming cities. They have many qualities cities have: large populations, busy commercial centers, and sprawling subdivisions. But they're not cities. There's no mayor. Residents can't fight city hall, because there isn't one.

These fast-growing unincorporated areas reflect a national shift toward turning some government functions over to private companies and away from multiple layers of government. For people in these areas, becoming a traditional city is unnecessary.

Paradise, Nev., controls 96 percent of the Vegas Strip, which is in Clark County, not Las Vegas — and 186,070 people live in the 44-square-mile area year round. It's the most populous unincorporated place in the country, but most visitors have never heard of it.

Other "non-cities" are better known, including Columbia, Md.; Kendall, near Miami, Fla.; Reston, Va.; and East Los Angeles.

Many of these places can grow without becoming cities because they have strong private or county governments.

In communities that were barren desert or rural farmland before developers built thousands of houses, homeowners' associations rule. They establish covenants that regulate the appearance and lifestyle of the new subdivision. They collect homeowners' dues to pay for private roads, landscaping, lighting and sometimes trash pickup.

But their counties provide all other services. For communities to survive without municipal government, they must be in counties that can provide essential public services effectively.

North Carolina's annexation provisions makes it highly unlikely that a significant "non-city" could develop in the state.

Reported in *USA TODAY*.

cj

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25 Years After Penn Central And Birth of 'Smart Growth'

Last month's issue of *Planning* magazine, published by the American Planning Association, celebrates the 25th anniversary of the Supreme Court's decision in *Penn Central vs. New York City* — but this should be a cause for mourning for supporters of the American dream. In that case, the Penn Central Railroad wanted to build a skyscraper above Grand Central Terminal, the much-admired Manhattan passenger train station. Historic preservationists, upset over the recent destruction of Pennsylvania Station, Manhattan's other classic train station, persuaded the city to deny the railroad a permit to build the skyscraper.

Penn Central sued, claiming this was a taking of property and required compensation under the Fifth Amendment to the Constitution. The skyscraper would have returned millions of dollars per year to the railroad and would not have significantly changed the appearance of the terminal. In fact, the terminal was originally designed to have a skyscraper-hotel built on top of it.

The case began in 1965 when Penn Central was one of the nation's largest companies. By the time the Supreme Court made its decision, 13 years later, the railroad had suffered the largest bankruptcy in the nation's history up to that point, a bankruptcy that could have been averted if the railroad had not had to suffer the kind of regulation exemplified by the Grand Central Terminal case. (Railroad deregulation in 1980 led to railroad prosperity that had not been seen since railroad regulation in 1907.)

In a 6-3 decision, the Supreme Court held that New York had the right to preserve the character and aesthetic features of the city. No compensation was required because the railroad was still able to earn a profit from managing Grand Central Terminal as a train station.

As University of Chicago law professor Richard Epstein said, this reasoning is absurd: What if the railroad had sold the right to build a skyscraper to someone else? Then the historic preservation law would take 100 percent of the value of that right. Why would compensation be justified in that case but not in the actual case?

In considering the Penn Central decision, *Planning* claims that it had "very little" effect on the definition of private property. After all, the magazine reasons, it is merely a restatement of the Supreme Court's 1926 Euclid decision, which authorized zoning.

In fact, Penn Central was vastly different from Euclid. In early zoning laws such as that contested by Euclid, neighborhoods of single-family homes sought to protect themselves and their property values from nuisances such as industrial, commercial, or multifamily developments. No one ever questioned the

right of cities to control nuisances. If in a residential neighborhood you have a factory that emits a vile odor, or a vacant lot that you turn into a junkyard filled with old cars and refrigerators, your actions represent a nuisance to your neighbors and the city can force you to clean up.

When the village of Euclid, Ohio, enacted a zoning law in 1922, a local realtor objected that the ordinance zoned land as residential that he wanted to sell for industrial use. As in the Penn Central case, the lawyer for Euclid argued that zoning was needed to preserve the character of the village. But the Supreme Court of 1926 was not impressed by this argument. The court instead supported the argument of an early land-use planning lawyer, Alfred Bettman, who filed an amicus brief arguing that zoning was a valid form of nuisance control. In a 6-3 decision, the court sup-

ported that view.

Euclid was about maintaining property values by controlling nuisances. Penn Central was not. No one ever maintained that one more skyscraper in Manhattan would reduce the value of adjacent properties. No one ever maintained that a skyscraper was a nuisance.

They just said, "Penn Central has something we want, and we want to make them pay for it while we get the benefit."

Penn Central opened the door for downzoning such as that found in rural Oregon, where no one is allowed to build a house on their own land unless they

own 160 acres and, if it is farm land, actually earn (depending on soil productivity) \$40,000 to \$80,000 a year farming it. Penn Central opened the door for upzoning, such as zoning to transform a neighborhood of single-family homes into apart-

ments by requiring, among other things, that if your house burns down you must rebuild it as an apartment.

Where Euclid allowed zoning to protect local property values, Penn Central allowed zoning to reduce local property values. Where Euclid allowed zoning to prevent nuisances in neighborhoods, Penn Central allowed zoning to impose nuisances on neighborhoods. In short, without Penn Central in 1978, we would not have smart growth today.

One of the dissenters from the Penn Central case was then-Associate Justice William Rehnquist. Since he became chief justice in 1986, several cases have chipped away at Penn Central, but most have been 5-4 decisions. Let's hope that a larger majority of the Supreme Court sees fit to overturn Penn Central before its 30th anniversary. CJ

Randal O'Toole is senior economist with the Thoreau Institute (www.ti.org) and the author of *The Vanishing Automobile* and *Other Urban Myths*.



Randal O'Toole

They just said, "Penn Central has something we want, and we want to make them pay for it while we get the benefit."

From Cherokee to Currituck

N.C. Supreme Court Rejects Special Economic Restrictions

By MICHAEL LOWREY

Associate Editor

CHARLOTTE

Under the N.C. Constitution, the General Assembly may not enact special economic restrictions for parts of the state without a showing of special need. Based on this doctrine, the N.C. Supreme Court has upheld a lower-court ruling that employment discrimination regulations adopted by the Orange County Human Relations Commission are unconstitutional.

In 1987, the Orange County Board of Commissioners established the human rights commission. By the mid-1990s, the county asked for, and the General Assembly passed, legislation allowing for "local administration of federal and [s]tate laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, disability, marital status, familial status, and veteran status."

The human rights commission, in turn, adopted anti-discrimination guidelines that included procedures and protected classes that existed only in Orange County and nowhere else in the state.

The Supreme Court agreed with Superior Court Judge Steven A. Balog that these regulations violate Article II, Section 24(1)(j) of the N.C. Constitution, which prohibits "any local, private, or special act or resolution... [r]egulating labor, trade, mining, or manufacturing." By creating

protections based upon family and veteran status and creating an addition remedy, the court found that the human rights commission had, based upon a grant of power from the legislature, in fact acted to regulate labor. The high court also noted that the record did not contain any special justification for these unique regulations.

"If the General Assembly should undertake to address employment discrimination by means of a state statute, Article II, Section 24 requires that it enact either a statewide law applicable to employers and their employees regardless of where they reside within the state or a general law that makes reasonable classifications based upon rational differences of circumstances," Justice Robert Edmunds wrote for the high court.

"That process was not followed here. Upholding the particularized laws in this case could lead to a balkanization of the state's employment discrimination laws, creating a patchwork of standards varying from county to county. The end result would be the 'conglomeration of innumerable discordant communities' that Article II, Section 24 was enacted to avoid."

The case is *Williams v. Blue Cross Blue Shield of N.C.*, No. 277PA01.

Whitewater loans

Many North Carolina localities are facing difficult choices in tight budget times. The state's largest city, Charlotte, is not immune to the problems. With its hotel-motel tax money committed for the foreseeable future to building an arena for the NBA expansion Bobcats, the city has a limited ability to fund other tourism or cultural projects without raising taxes.

Among the projects seeking city sup-

port is a proposed whitewater park in western Mecklenburg County. The park, modeled after one built for the 2000 Olympics in Australia, would be run by a nonprofit agency. Construction is estimated to cost \$21.5 million. Most, but not all, of the funds would come from private sources. The group wanting to build the park is seeking \$2 million from Charlotte.

Unlikely many other tourism-related projects, however, what the group is seeking, and the Charlotte City Council has approved, is a potential future loan commitment. The commitment would help the park obtain loans to finance construction.

Also unusual is that the park's business model would, if all goes accord to plan, actual generate revenues for local governments that help. A study by UNC-Charlotte economist John Connaughton projects that the park would have a greater economic impact than a minor league baseball team. The study, paid for by supporters of the park, also projects that annually the park would attract 176,280 visitors from more than 75 miles away, a greater number than a NBA basketball franchise will attract from out-of-town to Charlotte.

Connaughton identified another possible benefit. "Charlotte suffers an identity crisis. We don't have something to draw visitors," he told *The Charlotte Observer*.

"Every downtown's got an aquarium. Everyone's got an Omnimax theater. But who's got a whitewater park? It could

go a long way toward solving a problem they've been wrassling with."

Winston-Salem to fix houses

In a change of policy, Winston-Salem has decided to fix up certain abandoned houses rather than tear them down. The move is designed to increase the availability of affordable, quality housing.

The city, like all North Carolina municipalities, has the authority to set minimum housing quality standards. It also has the authority to repair or tear down buildings that do not meet the standards.

Winston-Salem's policy has been to tear down houses if they have been abandoned for a year after the city issued an order to repair or vacate the dwelling. The city would also have homes demolished if the cost of repairs exceeded 65 percent of the house's value. The cost of demolishing a house is typically \$3,500 to \$4,000.

Under the new rules, homes would be repaired if they can be brought up to code for \$3,500 to \$4,000 and the expense does not exceed 65 percent of the homes' value. The city will not repair homes in neighborhoods having serious vandalism problems.

The repairs are not gifts to building owners. Winston-Salem obtains a lien for the cost of the repairs. If the lien is not paid off within five years, the city can foreclose of the property.

City officials note that the new policy will benefit owners that cannot obtain loans to repair their properties.

"In the long run, it's healthier for the community to have old stock restored than to have the empty lot where you hope someone will build," Dan Besse, council member for the Southwest Ward, said to *The Winston-Salem Journal*. CJ

By creating protections based upon family and veteran status... the Human Rights Commission in fact acted to regulate labor.

Meese: Filibuster on Judicial Nominees Is Unprecedented

After his presentation at a John Locke Foundation luncheon July 8, former U.S. Attorney General Edwin Meese sat down for a **Carolina Journal Radio** interview with foundation President John Hood. The following is an edited transcript of their conversation:

Hood: The judicial nomination fight in Washington gets some attention. Sometimes it doesn't get a whole lot of attention, but it's still here and it's still going. What's really at stake here? Why is there such a deadlock in the Senate?

Meese: Well, the reason is because, unfortunately, the Democratic leadership is unwilling to carry out its constitutional responsibility to advise and consent and to allow President Bush to carry out his responsibilities to nominate and then with that advice and consent appoint judges to the federal courts, the district courts, and at the present time the Courts of Appeals.

When I say carry out their responsibilities, if the Senate leadership would allow an up or down vote, then the president would either appoint or not appoint depending on whether he has the advice and consent of the Senate. But what the Democrats are doing is something that is virtually unprecedented in the history of the Senate.

And that is they are filibustering these candidates, which means that there is no way then that the majority of the Senate, including some Democrats who want to have the opportunity to vote, can carry out their responsibility so that the president can proceed with his.

Hood: You say that it's unprecedented for the Senate, or a Senate minority in this case, to filibuster judicial nominees. We've certainly seen, for example, in previous sessions in which there was a Democratic U.S. Senate, perhaps that there was a roadblock at the committee level. But now that there is a Republican-controlled Senate the committee is no longer the roadblock. Now it's the floor.

Meese: That's right. And whether it's been a Democratic president and Republicans in the Senate or vice-versa, there really has not been, to my recollection the kind of gridlock we have at the present time.

Hood: Well, the advise and consent power in the Constitution suggests, just based on its textual wording, that the senators might be giving advice to a President about an appointment and then they would have to consent to the appointment. A lot of the Democrats defend the roadblocks now before President Bush's nominees on

the grounds that "the Constitution gives us the right to say no."

Meese: Well, they do have the right to say no and I don't think anyone would quarrel with that. Nobody says that the Democrats have to vote for a particular candidate.

But what the Democrats are doing is not even allowing these nominees to come to a vote before the Senate. And that's this manipulation through the use of the filibuster that prevents that from happening.

Hood: So the rest of the Senate might say, "We have the right to say yes or no and you're keeping us from that right."

Meese: That's exactly correct. And that's what the situation is. As a result, we have numerous courts throughout the country that are going with judicial vacancies that have been going on for several months and in some cases years.

Hood: And that has real-world consequences for cases, I presume. Most of the big cases in federal court don't get to the U.S. Supreme Court, they get resolved in the Court of Appeals, right?

Meese: That's correct. The Supreme Court takes maybe 80 or 90, sometimes as many as 100 cases a year out of the hundreds and in some cases thousands of cases that go before the appellate courts. So, it really is a problem. In some courts a third of the positions of the court are now vacant. And so even though they can fill in somewhat with senior judges, it's been declared by the chief justice literally a "judicial emergency."

Hood: Certainly, as we've said, the Constitution does give the Senate a role in judicial nominations. If it's not the way the Democrats currently in the Senate are doing it, what would be the appropriate way for senators to carry out this responsibility? Even what would be appropriate grounds for saying no to a judicial appointment?

Meese: Actually, the Constitution doesn't

say what the grounds are for saying no, but if you go back in history you find that the advise and consent responsibility given to the Senate emerged after a lot of debates at the Constitutional Convention.

At one time some people thought the Senate should appoint the judges, as is done by some state legislatures. Other people thought it ought to be totally the responsibility of the president.

They finally came up with this compromise that the president would have sole power of appointment, but that in order to do that [he needed the advice and consent of the Senate].

At the time they were concerned that the president would appoint his own cronies. Or that he might appoint people only from certain states because there was a lot of rivalry between the states back then.

Hood: As if there isn't any now.

Meese: And so that was put in for that

reason. So there is no criteria literally for a person to vote yes or no and they have that right. And certainly whatever might be the criteria that a particular senator would utilize would be the basis on which he or she would vote yes or no.

But as I mentioned earlier, the real problem here is getting them to a vote. All that the president is asking and all that the Republican leadership is asking is that they stop this filibuster, which was never invented for the purpose of stopping nominees.

It hasn't been used for presidential nominees or for other offices. It hasn't been used in the past, with a couple of unusual exceptions, for nominees for the judiciary.

So, this is really a gridlock that is hurting the judiciary. It's actually making a farce of the Senate and it's hurting the country.

Hood: I guess one of the concerns that a lot folks in Washington and elsewhere have about this is that it sets a precedent. If there are filibusters for Miguel Estrada, Patricia Owens, some of these other Court of Appeals nominees, might there be a filibuster in the future if there were a vacancy on the U.S. Supreme Court?

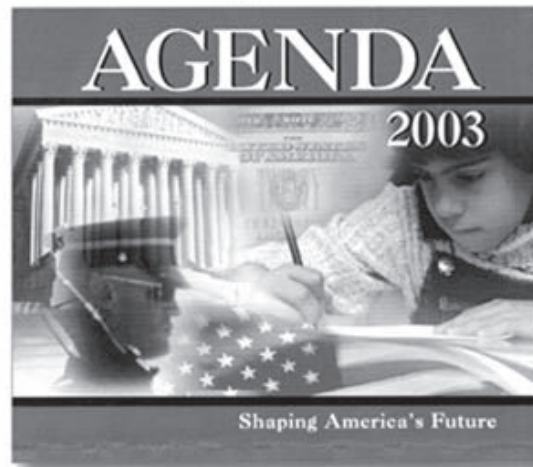
Meese: Yes, that certainly would be one of the ramifications if this filibuster was allowed to succeed and it would set a precedent so that in a sense the Senate is going beyond its advise and consent power and is really allowing a minority of the Senate to exercise a veto which was never intended in the Constitution.

CJ



Former AG Edwin Meese

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From the Liberty Library

• The British Empire was the largest in all history. By the eve of the Second World War, more than one-fifth of the world's land surface and nearly one-fourth of the world's population were under British rule. Yet for today's generation, writes Oxford professor Niall Ferguson, the British Empire has come to stand for nothing more than a lost Victorian past. In *Empire: The Rise and Demise of the British World Order and the Lessons for Global Power*, Ferguson argues that the British Empire should be regarded as the very cradle of modernity. Nearly all the key features of the 21st century world can be traced back to the expansion of Britain's economy and culture from the 17th century until the mid-twentieth. See www.basicbooks.com for more information.

• Sol Stern's *Breaking Free: Public School Lessons and the Imperative of School Choice* explores the growing demand for school choice among poor families in the inner city. Stern describes the dramatic successes and occasional failures of this "new civil rights movement" in three key cities: Milwaukee, Cleveland, and New York. Filled with human drama, Stern's book describes how cash-starved Catholic schools in the South Bronx are performing small educational miracles every day with children the public schools have given up on. In Milwaukee and Cleveland, Stern finds that the voucher program has rescued many poor minority children from violent, chaotic, and failing public schools and allowed them to attend parochial and private schools, where high expectations often yield high achievement. Learn more at www.encounterbooks.com.

• Diversity is America's newest cultural ideal, writes Peter Wood in *Diversity: The Invention of a Concept*. Corporations alter their recruitment and hiring policy in the name of a diverse workforce. Universities institute new admissions rules in the name of a diverse student body. What its proponents have in mind when they cite the compelling importance of diversity, Wood argues, is not the dictionary meaning of the word, but rather a set of prescribed numerical outcomes in terms of racial and ethnic makeup. Wood shows that diversity is profoundly anti-individualist and at odds with America's older ideals of liberty and equality. Also from Encounter Books.

• *Moneyball: The Art of Winning an Unfair Game* is a quest for the elusive secret of success in baseball. Author Michael Lewis looks at the front offices of major league teams, but finds the real jackpot is a cache of numbers collected over the years by a strange brotherhood of amateur baseball enthusiasts: software engineers, statisticians, Wall Street analysts, lawyers, and physics professors. What these geek numbers prove is that the traditional yardsticks of success for players and teams are fatally flawed. Billy Beane, general manager of the Oakland Athletics, paid attention to those numbers and *Moneyball* records his successful experiment in fielding a team that nobody else wanted. More on this title on the Internet at www.wwnorton.com. CJ

Book Review

Democracy by Decree: Judges Seize Government

• Ross Sandler and David Schoenbrod: *Democracy By Decree: What Happens When Courts Run Government*; Yale University Press; 2003; 274pp.; \$30.

By GEORGE C. LEEF

Contributing Editor

RALEIGH
In the American political system, the three branches of government have their distinctive roles. The legislative branch is supposed to enact the law, the executive to enforce the law, and the judicial branch to adjudicate disputes and remedy violations. But what if one branch oversteps its authority? Consider the following instance.

The public schools of Kansas City, Mo. were quite pathetic in the early 1980s. Facilities were generally decrepit. Most white families had fled to the suburbs, leaving the schools "segregated." Student test scores were abysmally low. Civil rights activists thought they saw the path to improvement — file a lawsuit alleging a violation of the students' right to a good education.

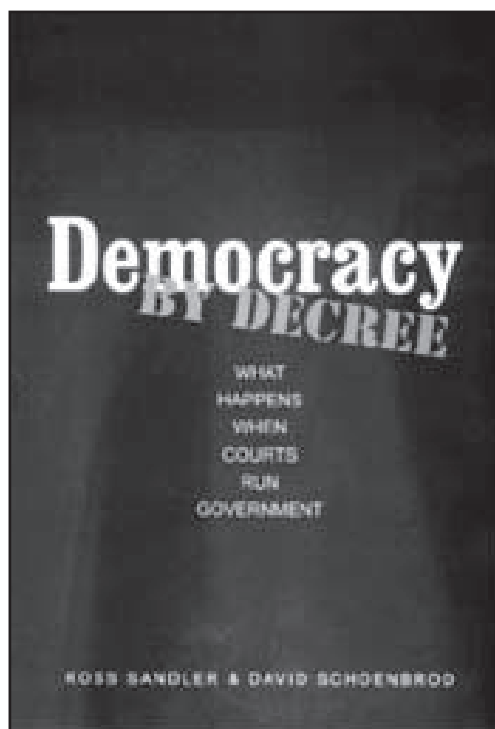
The case was heard by federal District Judge Russell Clark. He agreed that the plaintiffs' rights had been violated, but because the Supreme Court had already ruled that judges could not arbitrarily combine city and suburban school districts, Clark had to come up with another remedy. He ordered a vast program designed to turn the Kansas City schools into models with every imaginable amenity. Doing that might lure white families back into the city school district, but even if it didn't, at least the black students would benefit from having greatly improved learning facilities.

Judicial order doubled property tax

Money, however, was a problem. State and local elected officials did not want to spend the sums that the Clark Plan required. No problem. By judicial order, Clark doubled the Kansas City property tax and mandated that Missouri provide all necessary additional funds. More than \$3 billion was spent to create public school Taj Mahals in Kansas City. With 9 percent of the public school students in Missouri, Kansas City was getting 44 percent of the state's education spending. But 15 years after the advent of Clark's program, student test scores in Kansas City hadn't budged.

There is much to learn in that episode about the connection (or lack thereof) between education spending and results. There is also an important lesson on the trouble that arises when judges take over the legislative and executive roles under the guise of "protecting rights." The notion that a judge has the power to impose taxes and direct expenditures would have caused the drafters of the Constitution utter amazement. Nevertheless, in the early 21st century, we find that such judicial usurpation is widespread.

The Kansas City case is far from unique. In *Democracy by Decree*, law professors Ross Sandler and David Schoenbrod show that we are experiencing a plague of judicial policy-making as courts deign to assume legislative and executive functions. Whenever legislators have created what the authors accurately label as "aspirational rights" — for example, the right of the disabled to "access" or the right of prisoners to "decent conditions" — lawyers eager to vindicate those rights have perfected techniques that usually result in court-enforced consent decrees. Those decrees have the effect of putting judges in charge of government institutions, rather than elected officials being in charge.



Both Sandler and Schoenbrod learned how to work the democracy by decree game as young lawyers and they provide a wealth of insight and detail on its operation. Most importantly, they have come to see the terrible costs of the system. "When judges impose such decrees," they write, "it is the voters who lose. They lose the ability to hold elected officials accountable for the performance of government institutions."

The black hole of school spending in Kansas City is a bad enough case, but contemplate this "prisoners' rights" case from Philadelphia. In 1982, lawyers representing convicts in Philadelphia's Holmesburg Prison filed suit, charging that Mayor Wilson Goode and other city officials had violated their clients' rights by permitting crowded conditions. Goode entered into negotiations with the lawyers. (The authors explain that elected officials frequently find that negotiating a deal with the plaintiffs' lawyers is an easy way of disposing, temporarily, of a politically embarrassing problem.) When the district attorney learned that Goode was about to agree to a cap on the number of prisoners who could be housed in Philadelphia jails, he foresaw disaster. With the jails already full, arrestees would have to be released before trial, never to be seen again. Unless they committed more crimes, that is.

Crime soared in Philadelphia

The judge in the case, however, refused to allow the district attorney to intervene and present evidence that the result of the proposed consent decree would be more now-shows at trial and more crime. Years of litigation followed, but the appellate courts also refused to allow the district attorney to intervene. The consent decree with its cap on the number of prisoners allowed finally went into effect, and the results were terrible. Sandler and Schoenbrod write, "The effect was worse than... the district attorney had predicted. It was a chilling crime wave.

The number of fugitives nearly tripled, from 18,000 to 50,000. In an 18-month period from Jan. 1, 1993 through June 30, 1994, Philadelphia police rearrested 9,732 defendants released because of the consent decree. These defendants were charged with 79 murders, 959 robberies, 2,215 drug-dealing crimes, 701 burglaries, 2,748 thefts, 90 rapes, 14 kidnappings, 1,113 assaults, 264 gun-law violations, and 127 drunk driving incidents." Even after all that, the judge refused the new mayor's request for an end to the prisoner cap, and fined the city \$100,000 for contempt.

Regulation of government institutions is often poor even when done by elected officials, but at least they are subject to periodic elections and may pay the price of being voted out if their blunders impose serious costs on the populace. *Democracy By Decree* makes the telling point that judges don't bear the cost of being wrong and are free to ignore the constraints of limited resources that tend to prevent elected officials from indulging in flights of utopian fantasy.

"Reform" judges stack the deck

Key to "success" in these cases is what the authors call "the controlling group," composed of lawyers and activist organizations. Using the leverage provided by many federal statutes that provide for private enforcement of congressionally created aspirational rights such as "clean water" or "freedom from discrimination," the controlling group usually finds it fairly easy to browbeat state and local officials into consent decrees. One factor working in their favor is the eagerness of many judges to assume the mantle of "reformer." A bit of forum shopping can pay off with a judge sympathetic to the goals of the controlling group.

Parties that would have reason to oppose the controlling group are often kept out of the negotiation process. In short, the deck is heavily stacked in favor of the sort of utopian solutions that appeal to zealous issue advocates.

Having identified a significant problem, what do the authors propose? The Philadelphia prisoner cap disaster did have one silver lining — Congress passed the Prison Litigation Reform Act, which became law in 1996. That law corrected the most glaring imbalances in prisoner rights cases. Under it, for example, all elected officials with criminal justice responsibility are given the right to intervene. It also reined in judges eager to try their hands at prison reform by denying them authority to go beyond the minimum steps necessary to remedy violations of federal law.

Sandler and Schoenbrod, however, don't pin their hopes on Congress, fearing that it would go "too far," and tip the scales in favor of state and local officials who aren't overly concerned about constitutional and statutory rights. Instead, they set forth principles that they think judges should follow in handling such cases. For example, they argue that "In enforcing rights, judges should to the greatest extent practicable, leave policy making to the elected policy makers." The authors' principles, if followed, would certainly ameliorate the terrible situation that has developed, but one must wonder why judges with the reformer mindset would restrain themselves just because two law professors have pointed out that in the past we have had some bad results from excessive judicial involvement in policy-making. Telling people that they shouldn't do what they want to do rarely does much good. My own view is that a better approach to closing this Pandora's Box would be for Congress to pull the plug on the numerous aspirational rights it has created.

The virtue of *Democracy By Decree*, though, lies in its clear exposition of the problem of courts running government. Before we can find the solution, we must first understand that something needs to be solved. The authors have done a commendable job in showing that the United States is suffering from judicial usurpation of legislative and executive functions and their book deserves a wide reading. CJ

Book Review

Bush at War: Woodward Captures Details of Moments in History

• Bob Woodward: *Bush at War*; Simon & Schuster; 400 pp; 2002; \$28.

By NATHAN LINTNER

Guest Contributor

I remember Sept. 12, 2001 and the days that followed. The hours and seconds were lost to a constant distraction, a sense of shock, mourning, and confusion that followed me everywhere.

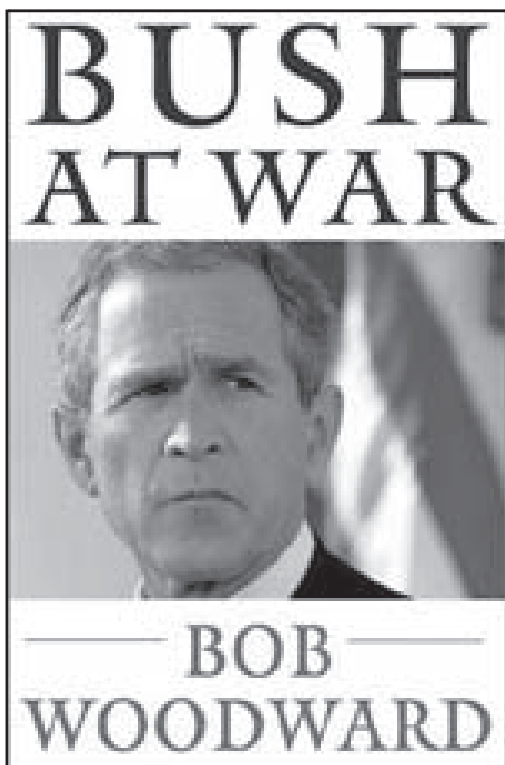
Driving through the thick morning traffic and 5 p.m. rush hour I could see American flags everywhere: streaming from car windows, on stickers carefully pasted to bumpers, in store fronts, and on houses and mailboxes. Listening to news reports and patriotic songs on the radio, I had to fight back tears.

I still recall with wonderful clarity how we as a nation vowed to never forget the tragedies that struck the Pentagon, lower Manhattan, and a field in Pennsylvania. In the days and months following Sept. 11 we said we would put aside partisanship and politics and unite to defend America wherever and from whomever our nation was threatened. But that was almost two years ago. The expressions of unity that I witnessed then are almost nonexistent now.

As a person who understands politics and history, I know that the memory of the masses is fickle and that it is our collective nature to selectively forget. I realize that solidarity, even when forged through grief, cannot last. At times I hoped that Sept. 11 might be different, but deep down I knew it was impossible.

The dawn of War on Terror

President Bush has not forgotten. When the planes hit the towers in New York we knew where we were and what we were



doing. But we had little idea of where the president was, and what he was doing, thinking and planning. In *Bush at War*, Bob Woodward details the first chaotic hours and months following the book ends with the United States securing victory in Afghanistan and Osama Bin Laden on the run.

Woodward takes the reader on an intimate journey with the President and other top administration officials as they face the reality of Sept. 11 and prepare for war. It is an essential read for any student of history and will surely capture the interest of each responsible citizen. On the whole, it is brilliant, concise, and informative, though some may find the final 111 pages less engaging because they sometimes read like a courtroom record. Still the depth of research and attention to detail are impressive and the

book makes for an overall enthralling read.

The reader gets to know not only Bush but other notable characters such as Secretary of Defense Donald Rumsfeld, Secretary of State Colin Powell, CIA Director George Tenet, National Security Adviser Condoleezza Rice, and, to a lesser extent Vice President Richard Cheney. Woodward covers the interactions of these and other players as they devise strategies and prepare for meetings with the president. The information provided is interesting and dramatic. It chronicles the details of the executive branch at work: planning, argumentation from which the reader culls an understanding of what it is like to work for the president. Some of the most dramatic passages are those that reveal the in-fighting among senior officials and the activities of Special Forces personnel and CIA operatives abroad.

The 40-page epilogue is likewise rich with detail. It provides reflective commentary from Rumsfeld and Bush and insight into operations in Afghanistan. The president is quoted at length on the politics of leadership and his opinions of North Korea, Iraq, and the UN. While most, if not all, of the issues covered in the epilogue are touched upon in the chapters, their primary focus is responding to Sept. 11, the beginning of the war on terror and the military campaign in Afghanistan.

The epilogue devotes attention to other world affairs: Bush's speech at the United Nations and the question of how to deal with Iraq.

In a four-hour interview that Woodward conducted with the president, Bush recalled what he was thinking when word came that the second tower had been hit. His chief of staff, Andrew Card, interrupted him in front of cameras and second-graders in Sarasota, Fla., and whispered the news in

his ear. "They had declared war on us, and I made up my mind at that moment that we were going to war," Bush said.

Later aboard Air Force One, Bush was on the phone with Cheney. "We're going to find out who did this, and we're going to kick their asses," Bush said.

One night I was watching Charlie Rose on PBS when Woodward's book was mentioned. Readers of the Woodward book will know Bush is in charge, Rose said. The following week I went to the bookstore and bought it. I found it difficult to put down. I believe most who read it will, too.

A president's steely resolve

Bush at War takes the reader into the heart of the administration during its most trying moments. It reveals precisely why Bush cannot and will not forget Sept. 11 and how the events of that day made the defense of the country the primary focus of his presidency.

In the book's closing paragraph Woodward relates a quote from a U.S. serviceman. The soldier was standing outside Gardez, Afghanistan on Feb. 5, 2002 along with some 25 other men from U.S. Special Forces and CIA paramilitary teams. They had just finished burying a piece of the World Trade Center in the ground. After reading a prayer, the man said, "We consecrate this spot as an everlasting memorial to the brave Americans who died on September 11, so that all who would seek to do her harm will know that America will not stand by and watch terror prevail. We will export death and violence to the four corners of the Earth in defense of our great nation."

Bush at War captures the importance of Sept. 11. It reminds us of the tragedies we experienced and that we are very much a nation at war. cj

Book Review

The Voluntary City: A Free Society's Alternative to Big Government

• David Beito, Peter Gordon, David G. Green, and Alexander Tabarrok, editors: *The Voluntary City: Choice, Community, and Civil Society*. University of Michigan Press, 462 pp. \$65 hardback, \$24.95 paperback.

By WILLIAM L. ANDERSON

Guest Contributor

Since the late 1960s, the typical picture of the U.S. city has been that of a virtual cesspool of crime, poverty, and drug abuse. I remember a magazine cover of a smog-enclosed metropolis with the cover, "Our Sick, Sick Cities." Sen. Hubert H. Humphrey of Minnesota regularly gave speeches in which he called for a "Marshall Plan to rebuild our cities," and his theme has resonated with the public and the political classes ever since.

While libertarians often focus upon the statist excesses of Congress, many cities in this country have gone beyond even the most coercive policies that have been dreamed by the U.S. House and Senate. From the banning of all privately owned handguns to seizing private property for questionable "eminent domain" purposes to banning home religious gatherings (in violation of zoning ordinances), many cities have become places where government chokes freedom. Furthermore, many cities find huge portions of their municipal budgets being met by tax dollars from Washington.

Thus, an observer might think that cit-

ies are not the place where free markets, private property, and voluntary transactions could be found. That is not the case, however, as *The Voluntary City* aptly demonstrates time and again. In 15 excellent essays, various writers tackle issues in which problems faced by individuals in a community have been solved through voluntary private cooperation. In other words, the standard "market failure" arguments that many economists of both the right and the left use to justify government intervention are not true.

For example, Bruce Benson, who has become well-known for his studies of law, justice, and the police, points out that the state does not have to create courts in order for a society to be able to dispense justice. Benson notes that in Medieval Europe nearly 1,000 years ago, the law merchant, which is a private system of international law, was already thriving and still is in existence today. Many firms and individuals, he points out, prefer to use private arbitration services to resolve disputes rather than depend upon the slow, inefficient, and unpredictable state courts.

However, Benson also takes issue with the idea that private courts are successful only because the government court apparatus stands behind them to enforce their rulings. Such a claim, he argues is "demon-

strably false." Historically, he writes, merchants who refused to abide by arbitration rulings often found themselves subject to boycotts by other merchants, a tool that effectively disciplined the wayward business owners.

One of the enduring myths of American society is that before the establishment of the welfare state in the first half of the 20th century, it was a "dog-eat-dog" world in

which most needy individuals fell through the cracks. David Beito and David G. Green effectively destroy that false notion in their essays on mutual-aid societies that dotted the urban and rural landscapes of this country.

Beito points out that numerous fraternal societies existed. Examples are Woodmen of the World, the Independent Order of Odd Fellows, the Sons of Italy, and the Polish National Alliance, all of which provided aid and financial help to families and individuals in need. That they were mutual-aid societies also implied reciprocity, which meant that those who received aid also could be counted upon in later times to help others who might be in a temporary fix.

Green writes about the friendly societies of Great Britain and Australia that covered literally millions of people, providing various kinds of medical care and other

welfare benefits. As was the case with the fraternal societies of the United States, these organizations in the 20th century found their efforts supplanted by the expanding state welfare apparatus that appeared in Great Britain and the United States. There was both a "crowding out" effect in which government aid, given without any responsibilities attached, became the norm for people in need.

Of course, it should also be pointed out that the descendants of those who were part of these mutual-aid societies increased their own standards of living mostly through private enterprise and did not need the same kind of welfare apparatus. The descendants of those who have been engulfed in the modern welfare state have not been so fortunate, as many have drifted into what can only be called an underclass.

The Voluntary City is must reading, I believe, for those who would champion not only private enterprise, but also a free society. That is because the numerous examples shown by the various authors involve individuals who freely choose to place themselves within certain social arrangements that require reciprocity. From private arbitration to respect for private police to communities that operate essentially under private law, they demonstrate that a voluntary society not only works, but also prospers. cj

William Anderson is a professor of economics at Frostburg State University

The Voluntary City is must reading, I believe, for those who would champion not only private enterprise, but also a free society.

Fanatics May Feast On 'Fat Taxes'

Watching newscasts back in the days of Mao Tse-Tung's Red China, Americans chuckled at the images of thousands of workers, lined up military-style, grinding through calisthenics while a government official presided. Strong bodies were needed to feed the Communist machine.

Surely, we told ourselves, oppression would never come to the good old land of the free.

But of course those images on the TV screen, and our interpretation of them, were from a different time, a different place — far removed from the onset of the know-it-all '90s. It was early in that decade when a small, vocal group of anti-fat-food fanatics began to influence public policy, persuading the U.S. Department of Health and Human Services to add weight loss to the national public health agenda.

Armed with pseudo-statistics cooked up by junk scientists, the health nuts chirped long and hard enough until the nation's media joined the anti-obesity chorus. Americans refused to listen, so the know-it-alls persuaded government bureaucrats to shout the message. A few years later, the national Center for Disease Control and the surgeon general joined the campaign and began trumpeting obesity as a "public health epidemic" that was driving up the cost of health care.

Come on. Reasonable people might understand the CDC concerning itself with a communicable disease such as smallpox, but corpulent people don't infect others with "fatpox."

By the 21st century the anti-fat fanatics began bombarding Americans with a subliminal message: An individual — irresponsible slob that he is — no longer can be trusted to care for his own body. No sir. It belonged to society, or the state, to mold according to the know-it-alls' one-size-fits-all pattern.

"Fat taxes" on consumers of soft drinks and fast food have been proposed ostensibly to force compliance where propaganda and persuasion failed. Although not labeled a fat tax, North Carolina's General Assembly in its proposed budget this year approved a higher sales tax on soft drinks and candy. A California legislator filed such a measure last year, and a New York assemblyman proposed a bill this year that would tax not only junk food, but also video games and television commercials. Once the door is opened, farther-reaching legislation is sure to follow.

Next enter the lawyers. Where fat taxes fall short, lawsuits, or merely the threat of litigation, will extort compliance by restaurants and other purveyors of foods deemed unhealthy by the know-it-alls.

Using the same "costs to society" argument a few years ago in the states' lawsuit against the tobacco industry, antismoking fanatics drew the blueprint for the anti-fat know-it-alls. Rather than paying for health-care costs, states piddled away on boondoggles the billions of dollars won in tobacco settlements. Born in blackmail, Golden LEAF today serves as North Carolina's monument to government waste.

The argument that food by itself causes obesity is intrinsically flawed. A recent study by Lisa Sutherland, a researcher at the University of North Carolina at Chapel Hill, demonstrates my point. Sutherland analyzed federal data on the diet, weight, and physical activity of teen-agers, ages 12 to 19. Sutherland found that from 1980 to 2000, calories the teen-agers consumed rose by only 1 percent, while obesity increased by 10 percent. Significant, though, was that physical activity dropped by 13 percent.

Contradicting long-held scientific thought, recent evidence uncovered by numerous respected researchers indicates diets rich in fats and low in carbohydrates are healthy and perhaps preferred. But, of course, improving public health isn't the real goal. The real payoff is more money for government slush funds and greater control over citizens' lives.

Today, China marches toward capitalism — while a shrill faction in America wants us to surrender more of our personal freedom.

CJ



Richard Wagner

Editorials

PRIVATIZE EMS

Ambulance services can be contracted

There are many critical services that exist in all communities. Among these are police protection, firefighting, court systems, and medical services, including ambulances and hospitals. While it's certainly true that having top-rate services is vital, it does not follow that the only means to assure the quality or cost-effectiveness of all these activities requires public ownership.

While one can argue about what functions specific local government should perform, it is clear that emergency medical service, as 911 ambulance service is correctly referred to, need not be run by a county or town. Indeed, in many places in the United States, it already isn't.

A study in the *Journal of Emergency Medical Services* in 2000 highlights this operation. Of the 200 largest municipalities in the United States, 188 rely on fire departments as first responders for medical emergencies. This is hardly surprising — the number of fires is down 40 percent over the past two decades and many fire departments are looking for additional responsibilities. In some cities, 90 percent of calls fire departments respond to do not involve putting out fires.

When it comes to providing emergency ambulance services, there is no single model for how service should be provided. The most common service type was private-for-profit service, though only 34.5 percent of the cities used such a model. The second most common provider type was fire departments using multirole personnel, 34 percent. Other provider types are third-party agencies, 12 percent; private nonprofit agencies, 5 percent; fire departments using single-role personnel, 5 percent; public utility model, 5 percent; hospital-based services, 3 percent; and volunteer services, 1 percent.

Fire department-based models are prone to being expensive. Firefighters are typically paid more than paramedics. Fire engines certainly cost a lot more — up to six times more — than ambulances.

In North Carolina there are only two private, for-profit EMS operations in existence. They serve Ashe and Watauga counties.

Privatization potential

Privatization and outsourcing are not panaceas. They are not talismans whose mere mention will keep the budget wolves at bay or keep government officials from having to make tough choices.

Privatization is a mighty sword, though, in the battle to achieve efficient government operations. As with any powerful weapon, it also takes a skilled and strong user to wield it effectively.

Too often the process fails because of unrealistic expect-

tations or poorly thought out contracts. Governments need to decide going in what they hope to achieve by outsourcing and to be realistic about what is possible. Contracts need to have well-designed requirements and include well-defined penalty provisions.

Privatization also requires a strong sense of commitment. Because the greatest gains often come from thinking outside the box and implementing seemingly dramatic changes, strong leadership is needed to achieve in practice what appears sound on paper. Doing things differently inevitably generates opposition from those that might be affected or fear change in general.

It's also about quality

One of the most common, and most commonly wrong, assumptions about privatization is that it's just about saving money. While potential cost savings are an important consideration, there are many more benefits to contracting out for services that simply trying to save a few dollars. Indeed, the main benefit of privatization often is that it allows governments to obtain a better quality product than what they currently enjoy.

The JEMS study found that private providers are often better-equipped than fire-department-based EMS operations. More than two-thirds of private agencies had heart defibrillation devices, compared to only 40 percent of fire department-based EMS providers. Private agencies were also more likely to be subject to an external review and use advanced technologies.

That's not to say that the savings from having local governments contract out for EMS services can't be considerable. Pinellas County in Florida, for example, conducted a managed-competition process to determine who would run its EMS operation. The winner, a private firm, has improved the quality of service. Pinellas County projects that it will save \$13 million to \$21 million over the 11 years of the contract.

Closer to home, Boone's Watuga Medics, Inc., was featured in the January 2003 issue of *Carolina Journal*. The firm has among the lowest, if not the lowest, rates in the state. In addition, it's certified to offer training, just as many of the state's community colleges are.

Good local government has many characteristics. Among them certainly is a desire to provide the quality services at the lowest cost to taxpayers. Emergency medical technicians and paramedics are trained medical professionals.

Unlike other medical professionals, they work at mobile locations, in response to request for urgent assistance. In some places, this has caused EMS to be viewed as a complement to, or element of, fire departments doing first-responder work. This may or may not be the right answer for all areas. Certainly, medical services are generally not publicly owned in the United States, so it does not follow that EMS must of necessity be.

By exploring contracting out for EMS services, local governments may well be able to achieve significant improvements in service at a lower cost.

CJ

BLOODLESS BUDGET

Predicted "evisceration" was really pristine

Remember all that talk about how North Carolina's fiscal woes would lead to a bloodletting in Raleigh, with massive budget cuts and lots of helpless North Carolinians left without basic services?

The North Carolina General Assembly and Gov. Mike Easley have now enacted and signed a budget for the next two fiscal years. There is a noticeable lack of blood.

All the lobbyists for public and private institutions who subsist on taxpayer money – the University of North Carolina system, the public school folks, the economic-development hucksters, and the corporate-welfare shills – spent weeks perfecting their talking points via a very public hand-wringing. Unwilling to settle for just the half-billion-dollar increase in taxes in each of the next two years that both the N.C. House and Senate had already agreed to back in April, these special interests argued that additional revenues were needed to forestall a governmental crisis.

Well, they got only some short-term federal aid and a few diversions of trust funds. They didn't score \$330 million a year from new excise taxes on tobacco and alcohol (the Senate Democrats' preferred solution) or a \$400 million a year state lottery (Easley's preference). So what happened? Not massive, bloody budget cuts, but precisely the opposite.

The authorized General Fund budget for North Carolina will grow by 3 percent in 2003-04 and 5 percent in 2004-05. That's nearly \$1.2 billion in new spending in just two years. This has got to be the most pristine evisceration in medical history.

The little tricks of the budgetary trade

Indeed, the spending growth for next year is even greater than the apparent \$429 million increase in the General Fund. That's because the "General Fund" has turned incorporeal (pardon the military pun). Some \$192 million in Medicaid spending in the coming year is labeled a "cut" from the General Fund because it will be financed from temporary federal aid. Patients and providers will see no difference, and the responsibility reverts back to the General Fund in the fiscal year beginning July 1, 2004.

These are the little tricks of the budgetary trade that frustrate attempts at communicating what's really happening to average readers and viewers outside of legislative circles. The professional hand-wringers have cited the above Medicaid "cut," as well as another \$219 million Medicaid "cut" that was little more than a correction of a previously exaggerated spending forecast, to suggest that North Carolina health and human services programs shrank by 6 percent in the new state budget. Nonsense. Our welfare and public assistance programs continued their ceaseless and unaffordable growth – albeit at a lower rate than we saw during the late-1990s.

Another trick that Gov. Easley and N.C. Senate leader Marc Basnight resorted to in the last days of the budget debate was to cite a *USA Today* study of state governments to the effect that North Carolina ranked "fourth in the nation" for its "excellent" fiscal mismanagement. Since few lawmakers, reporters, or observers were familiar with the newspaper's rankings, or the study upon which it was based, they could not have known that ranking was patently absurd.

It was based on a few years of data that missed most of North Carolina's rapid and unsustainable spending spree of the mid- to late-1990s. And it relied on a biased study of state tax systems by the left-leaning *Governing* magazine that assumed states with high tax burdens, particularly those with high income taxes, were better governed than states such as Texas, Florida, and Colorado – all of which have gotten through the past couple of years of rough fiscal times without major incident or major tax increases.

Why did state taxes go up?

Speaking of major tax increases, North Carolina is now the only state in the union to have enacted them in each of the past three years. The revenue portion of the new budget will cost us \$427 million more in sales taxes and \$124 million more in income taxes when fully implemented in the second year of the biennium.

Virtually all of those proceeds go to pay for two areas of government expansion: the aforementioned Medicaid growth and a mind-boggling 97 percent increase in the cost of servicing the state's bonded debt, the latter attributable primarily to a \$3.1 billion higher education bond issue sold

to North Carolina voters in 2000 on the promise that "it won't raise your taxes."

Make promises like that in the lending industry, and the state will prosecute you for fraud. But when the state makes such promises and then reneges, whom do you sue?

State lawmakers didn't raise our taxes to avoid deep budget cuts in education, prisons, and other core state functions. They taxed us to finance the welfare state and to build new buildings. The result wasn't an open wound in the state bureaucracy for all to see. Instead, it was another hemorrhage within North Carolina's already languid economy,

IN NESBITT'S ORBIT

Lawmaker gets its right on tourism bill

We savor the opportunity to agree with Rep. Martin Nesbitt, the Asheville Democrat and would-be House speaker, mostly because the opportunity is so rare. Now is one of those special times.

Nesbitt was among the (alas) minority of members of the North Carolina House to vote against a noxious piece of legislation that began its existence as an end-run around the voters of Charlotte. Back a couple of years ago, said voters spoke out overwhelmingly against a plan to use tax dollars to build a new arena for the Charlotte Hornets, who promptly fouled their nest and buzzed away to swampier climes on the Gulf.

Having duly noted the opinions of the great unwashed of the Queen City, who were under the mistaken impression that they did not reside in a King City, the monarchs in charge went to their legislative vassals and demanded another option for squandering public money on the project.

They got it in the form of proposed state legislation that would rebate sales and other taxes paid by the arena — oh, yes, and other tourism-related projects around the state, for good measure — in order to defray some of the construction cost.

Several gratuitous anti-Charlotte swipes in the General Assembly later (not that the city's critics haven't provided plenty of ammunition in recent years) the bill had become less about the NBA arena and more about a variety of convention center, civic center, and other projects dreamed of by the busybodies who populate city governments and their hangers-on.

It provokes a sigh to have to say this, yet again, but the citizens of North Carolina did not construct and do not elect their local governments to engage in what is basically a profit-seeking business. There are certain functions that only coercive institutions (governments) can perform. These are few but critical. Protecting citizens from force and fraud. Enforcing contracts and administering justice in courts of law. Protecting the fundamental elements of a free society, including a well-informed electorate and a basic level of public order.

Hosting tractor pulls and medical-device-salesmen conventions aren't on the list.

A failure to set correct priorities

Now back to Nesbitt. He put it best when during debate on the floor of the North Carolina House he noted the odd timing of this legislation:

"I don't know where all this is going to stop, but we cannot come down here and keep raiding our future revenues," he said. "Are we now going to say that it is our priority to build sports arenas and civic centers in the middle of a recession?"

But tourism is North Carolina second-largest industry — blah, blah, blah. But you have to spend money to make money in economic development, blah, blah, blah. But communities need jobs and this legislation represents leadership, blah, blah, blah.

We've heard these arguments over and over again. So has Nesbitt. So have most of the readers of this editorial. There is little empirical evidence for many of them. And virtually every state in the union claims that tourism is a major driving force in its economy.

The bottom line is simple: given the travesty of a state budget that just passed, including two more years of higher sales and income taxes (and, from Nesbitt's perspective, two more years of cutbacks in essential state services), does *anyone* really believe that the state's priorities properly lie in building more civic centers?

This is, inescapably, nonsense, and thanks to our favorite liberal mountaineer for saying so.

Left-Wing Education Rather Than Liberal

I am strongly in favor of liberal education. Unfortunately, University of North Carolina-Chapel Hill officials seem perfectly content to permit only Liberal education.

What's the difference? Simply put, the original ideal of a broad, challenging, and independent education in the liberal arts – with the term "liberal" used in its true 18th and 19th century meanings of "suitable for free people" and "independent of clerical or professional limits" – is diametrically opposed to the reality of left-wing cant at many colleges.

I like the description of liberal education offered by Canada's St. Thomas University. A true liberal education, St. Thomas states, relies on "an independent, inquiring mind. A liberal education teaches people how to think; it does not dictate what they ought to think. . . .

The liberal arts thus explore controversial and competing ideas in ways that demand informed, careful, and considered judgment." UNC and other institutions claim to respect this tradition, but their policies generate a very different outcome. Espousing the latest trendy notions of "promoting diversity," they show little interest in truly diversifying the faculty – which is overwhelmingly left-wing – or ensuring that diverse ideas are present in classes and official forums.

Real liberal-arts educators would ask tough questions of their cloistered faculty about why the political atmosphere on campuses is so wildly askew. At UNC-Chapel Hill, for example, alarm bells would have gone off in their heads at the suggestion from their faculty that, a year after a controversial selection on Islam was assigned to all freshmen, the school now require incoming students to read a notoriously slanted screed on "economic justice" by a socialist commentator, Barbara Ehrenreich.

Conservatives, students, legislators, and a new group called the Committee for a Better Carolina have taken the university to task choosing *Nickel and Dimed: On (Not) Getting By in America* as the 2003 assignment. In 2002, critics of a freshman assignment on the Qur'an had their hearts in the right place but erred in allowing UNC defenders to shift the debate to one about "censorship." UNC-Chapel Hill may be governed by left-wing bigots, but its academic assignments shouldn't be overruled by legislative action. Instead, its lack of interest in diversity – the real kind, the kind that matters in education – should lead policymakers to push for changes in leadership and reduce the extent to which taxpayers are compelled to subsidize the propagation of leftist ideology.

Naturally, university leaders don't see themselves as propagandists or bigots. But Provost Robert Shelton gave himself away in defending the choice of the Ehrenreich book. "Nobody I talked to thought this would be a controversial book," he said. You'd have to be cowering under a rock – or ensconced in academia, but I repeat myself – not to be aware of the controversy about *Nickel and Dimed*.

A cleverer defense is to grant Ehrenreich's extremist ideology and to say that the book is intended only to "start a discussion." But freshmen shouldn't be confronted each year with a left-wing book and then reassured that they will be "allowed" to disagree with it. That may be Liberal education. But it is hardly a liberal education. UNC-CH administrators may continue to squirt out dark and impenetrable rhetorical ink, like a fearful octopus, and try to obscure the issues by raving on about "academic freedom." Those who value freedom of thought in academia can't afford to let this succeed, again.

Hood is president of the John Locke Foundation, publisher of Carolina Journal, a syndicated columnist, and host of "Carolina Journal Radio," now broadcast each week on 13 stations across the state.

John Hood

Editorial Briefs

Libraries seek innovative funding

"If museums, orchestras, public broadcasting stations, and other cultural institutions in the community can raise substantial portions of their budgets from nontax revenues," asks Steve Coffman of Library Systems & Services, "why not the library?"

Fiscally struggling cities are reducing hours and laying off staff in free public libraries. But other institutions have tapped some important nontax funding sources.

For example, just as libraries circulate books for free, public radio stations provide programs free to anybody who wants to listen. But unlike most public libraries, public radio stations no longer depend on tax revenues for most of their operating budgets.

In 1985, public radio stations faced a loss of federal tax funding and turned to alternative revenue sources. They expanded pledge drives, adopted direct-mail fund-raising practices, and persuaded many people to contribute money to support free programming.

The stations developed millions of dollars in corporate sponsorships, and some stations began selling items through catalogs and other retail operations.

While 85 percent of public radio funding came from tax dollars in 1985, today more than 61 percent comes from private sources.

In Seattle, for example, only 14 percent of the revenues of KUOW now come from taxes; the rest come from individual memberships (51 percent), business sponsorships (31 percent), and retail and other sources (4 percent).

Meanwhile, some libraries have begun to experiment with more entrepreneurial approaches. A number have set up foundations; most have Friends of the Library groups that provide modest levels of support and have turned to corporations to help underwrite activities. For example, the Ferguson Library in Stamford, Conn., adds \$45,000 per year to its revenues by leasing space to Starbucks, and a growing number of libraries are installing cafes and gift shops to improve the ambience and generate revenue.

Reported in *American City & County*.

Budget Office tracks the uninsured

The Census Bureau estimates that 41 million Americans have no health insurance. But the Congressional Budget Office said the bureau's figure "overstates the number of people who are uninsured all year," while understating the number who are insured for only part of the year.

Although more than 240 million Americans have private health insurance or are covered by government health programs, CBO researchers estimate that 57 million to 59 million people, "about a quarter of the nonelderly population," lacked insurance at some time in 1998, the most recent year for which reliable comparative figures are available.

At the same time, government surveys suggest that the number of people uninsured for the entire year was 21 million to 31 million, or 9 percent to 13 percent of nonelderly Americans. The widely used figure from the Census Bureau is based on interviews conducted by the government as part of the Current Population Survey in March of each year.

The Census questions about insurance are meant to identify people who were uninsured for all the prior calendar year. But the CBO says that many people "report their insurance status as of the time of the interview, rather than for the previous calendar year as requested."

Congressional Budget Office Director Douglas J. Holtz-Eakin says that "the uninsured population is constantly changing. While many people are chronically uninsured, many more are uninsured for shorter periods of time."

How long do people go without coverage when they are uninsured? The CBO estimates that of those who became uninsured from mid-1996 to mid-1997, 45 percent were uninsured for four months or less, 26 percent were uninsured for five to 12 months, and 13 percent lacked coverage for 13 to 24 months. Sixteen percent were uninsured more than two years.

Reported in the *New York Times*. CJ

Why Just Race? We Need Universal Diversity

By GEORGE C. LEEF

Contributing Editor

RALEIGH

The recent Supreme Court ruling that state universities may use racial preferences in order to obtain a "diverse" student body — provided that they aren't blatant about it — has met with praise from education leaders in North Carolina.

While the Constitution requires the states to give "equal protection of the laws" to all, and the Civil Rights Act of 1964 forbids educational institutions that receive any federal funds from engaging in racial discrimination, the court saw fit to give the University of Michigan law school a pass on its race preferences on the grounds that there were "educational benefits" to be derived from having a diverse student body and a state's "compelling interest" in attaining those benefits justifies some preferential treatment.

There are strong reasons to doubt that those educational benefits are either real or "compelling" as traditionally defined by the courts. The Supreme Court just took the schools' word for it that more diversity means more harmony, understanding, etc. Just for the sake of argument, let's stipulate that diversity does really good things for a university and its students.

Where is UNC when we need it?

We then have to ask why the schools of the University of North Carolina system are doing so little to promote it. UNC and NC State have for years been endeavoring to increase the numbers of black, Hispanic, and American Indian students. Fine, but how do we know that this limited amount of racial and ethnic diversity is enough? Or even the best kind to have?

After all, human beings can be different in many aspects other than race. Consider religion. The predominant religious affiliation in North Carolina is Baptist. Does it contribute more to diversity on campus to add another black student who is Baptist, or to add another white student who is Catholic or Jewish — both denominations with far fewer adherents in the state? If exposure to people with different racial backgrounds is educationally beneficial, wouldn't exposure to people of different religious convictions be at least as beneficial? Why aren't our universities working to make sure that they have a reasonable cross-section of the range of religious belief, including agnostics?

What about political views? North Carolinians differ enormously in that regard. Within the state, you'll find everything from devotees of Ayn Rand to die-hard believers in socialism, with plenty of Democrats, Republicans, Libertarians, and Greens in between.

Shouldn't UNC make sure that there is at least a "critical mass" of students representing all of these? And

we know that the universities don't make any attempt at ideological balance among the faculty members, which is overwhelmingly leftist. Shouldn't there be "affirmative action" here for conservatives, in order to provide real intellectual diversity?

And which of these diversities is the most beneficial?

Does a black Baptist Democrat do more for diversity than a white agnostic Marxist? If we are really going to take diversity seriously, we shouldn't just assume that racial or ethnic characteristics are necessarily much more potent diversity boosters than are features based on the individual's thoughts.

Let's have universal diversity

I have scratched only the surface of diversity here, though. People are very diverse in their socio-economic backgrounds. Some students come from struggling, single-parent households, while others grew up in households with two parents and no shortage of

money. Some students come from families with small businesses, while in others, Mom, Dad, or perhaps both worked for large corporations. Some students come from small, rural towns; others grew up in big cities and their suburbs.

Those differences may have a strong impact on a person's outlook on life. Is UNC trying to ensure that there's at least a "critical mass" of students from each of the many identifiable socio-economic groups in society? If not, why not?

Do we need to be certain that we have diversity with regard to preferences for sports and fitness vs. couch potatoism? Diversity in musical tastes? Diversity in food preferences? Is diversity enhanced more with the admission of a guy whose lawyer father's ancestors came from Spain and who likes NASCAR racing, hard-rock music and western Carolina barbecue, or a vegetarian white gal whose single mother taught her to love and play Bach's cello suites?

Doing diversity looks exceedingly hard. Or is it?

What if universities simply admitted the best-qualified applicants? By "best qualified," I mean those with the strongest evidence of academic aptitude — the highest SAT scores, grade averages, and academic accomplishments. Those students would no doubt differ markedly in many ways. And those students would be fairly homogeneous in one important respect. They'd all be equally capable of learning the material covered by their professors.

Isn't that what college is supposed to be about, anyway?

CJ

Leef is director of the Pope Center for Higher Education Policy in Raleigh and a former college professor and legislative aide in Michigan.

*What is the proper role of government?***Three Market Intrusions That Lawmakers Shouldn't Make**By **MICHAEL L. WALDEN**

Contributing Editor

North Carolina lawmakers are considering (and may even have passed by the time this article appears) three interventions into private transactions between consumers and businesses. On the surface the proposed restrictions look reasonable, and they may even be popular with most citizens. But they raise serious questions about the proper role of government in private markets.

Limiting "payday lending"

So-called "payday lenders" provide short-term loans to consumers with little collateral or credit worthiness. The loans are usually for small amounts and require quick payback. Sometimes the lender holds a check for repayment based on the borrower's next paycheck (hence the term, payday lender).

Because the loans are risky for the lender, calculated annualized interest rates on the loans can be very high, often over 100 percent. Some people have expressed outrage at such high rates, and this has led to moves to prohibit or severely restrict payday lenders. Such a move is under way in North Carolina.

Payday lending is a classic example of an industry that has developed because there is a demand for its services. Customers of payday lenders are typically people who desire loans, but whose credit and income problems mean they can't qualify for loans at traditional lenders. Payday lenders meet this demand, but at costs to the borrower reflecting the higher risk of the loans.

The public-policy question is whether such loans should be allowed to continue. If the answer is "no," lawmakers should recognize the implications. It means lawmakers implicitly believe they can better evaluate the appropriateness of these loans than can individual consumers. But how can lawmakers know all the circumstances that motivate someone to desire small, short-term loans? Also, if payday lending is made illegal, this doesn't mean the demand for short-term, high-risk loans will disappear. Many borrowers will simply turn to other unconventional, and perhaps less scrupulous, sources for loans.

The better approach is for lawmakers to impose stringent informational requirements on payday lenders. Require payday lenders to clearly disclose the annualized interest rate on the loans to potential borrowers. Force the

lenders to show customers how many dollars they will repay in the future for every dollar they borrow today, and also require examples of the consequence of not repaying the loan. In other words, allow the customer to borrow, but make it easy for the borrower to beware.

Controlling gas prices

North Carolina lawmakers also have considered legislation to control gasoline prices. But the idea is not to limit how high gas prices can go. Instead, the proposed law would control how low prices could fall. Specifically, the law would prohibit any merchant from selling gasoline below cost.

The legislation was prompted by the relatively low gas prices offered by some large retail discount stores when gas prices were skyrocketing earlier this year. Other gas sellers cried "foul," claiming the low gas prices were an example of "predatory pricing" and should be declared illegal.

Predatory pricing occurs when a seller, often a larger firm with substantial resources, purposely sells a product below cost in order to drive competitors out of business. Then with the competitors gone, the theory goes, the remaining seller will be in a monopoly or near-monopoly position and will substantially increase the price.

Although the idea of predatory pricing has appeal to some, the theory is filled with holes. There are few, if any, examples of successful predatory pricing. Even if a firm could eliminate competitors using predatory pricing, the high profits made by the remaining firm would be a magnet for new competitors, especially in such a large market like gasoline retailing. Also, it's virtually impossible for any government agency to know whether a company is selling some product below its costs.

If a firm does choose to sell a product below cost, there's another interpretation besides predatory pricing. It's quite common for a firm to select a popular product and put it "on sale" in order to attract new customers.

The price of gasoline is best left to the marketplace and battles between alternative sellers. Such competition is a winner for the consumer.

Price gouging

After natural disasters and similar circumstances, there are often complaints about "price gouging" by sellers. The

prices of bottled water, chain saws, lumber, and tree removal services may jump. Many claim this is unfair and say government should do something to stop the higher prices. Indeed, there has been legislation before the state legislature to do just this. One form of the legislation would put arbitrary limits on such price increases.

As with the previous two examples, this legislation ignores economic realities and would likely impede a return to normal prices. There's no mystery why prices of certain products and services rise after a natural disaster. After the disaster, demand for the products and services increases, but unless the timing and scope of the disaster was precisely predicted, supply of those products and services was not comparably increased. Whenever this happens, the prices of the products and services will rise.

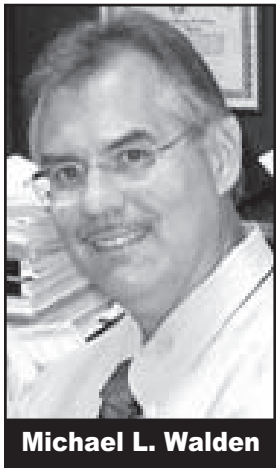
But the price increase will be temporary. The higher prices are a signal to companies to bring in more supply. Sellers of the now more popular products and services will scramble to deliver more supply to meet the greater demand. As this happens, the high prices will fall back to "normal" levels.

In fact, imposition of government price controls on popular post-disaster products and services will delay this response by suppliers. Companies have an incentive to move supply to where the profits are higher. Price controls will limit these profits and cause a more sluggish response of suppliers.

Again, the best role government in this situation is to help, not hinder, the marketplace. Government can work with forecasters to widely publicize the expected timing and intensity of natural disasters. Not only will this motivate protective actions by households, it also will prompt sellers to stockpile extra supplies of products related to coping with the disaster and cleaning up in the aftermath.

Government can also warn consumers to be wary of potential fraudulent sales of products and, in particular, services after a natural disaster. In their haste to recover from a natural disaster, consumers may lower their natural defenses against fraud. Government can remind consumers to exercise all the normal cautions in purchasing a product or service after a natural disaster. Government can also advise consumers to wait on making these purchases, with the expectation a lower price will be forthcoming.

The lesson from these three examples is that government ultimately can't control the economic marketplace. Efforts to do so can lead to unintended consequences that lessen, rather than improve, outcomes. Lawmakers should recognize the power of the market and the limits on themselves. Every economic issue or perceived problem doesn't have a public solution. *CJ*

**Michael L. Walden****Tax Increment Financing: Legislators Cook Up Another Bad Idea**By **DR. ROY CORDATO**

Contributing Editor

The North Carolina Senate has passed a constitutional amendment (SB 725) that would allow local governments to use "tax increment financing" to fund development projects. The logic is that government-subsidized new-business ventures will raise property values in the area and therefore increase property-tax revenues from those properties. With TIF bonds, debt holders will be repaid with revenues from taxpayers whose property values are enhanced and therefore benefit from the subsidies. The amendment would allow counties and municipalities to issue TIF bonds without the explicit consent of voters, now constitutionally forbidden.

The opening statement of SB 725 is at the heart of why this bill is flawed.

"...Governments in North Carolina... should be actively engaged in economic development efforts to attract and stimulate private sector job creation and capital investors in their areas..."

This premise is at odds with the facts. As noted by the Council of State Governments, "A comprehensive review of past studies reveals no statistical evidence that business incentives actually create jobs... They are not the primary or sole influence on business location-decision making and... they do not have a primary effect on state employment growth."

Studies of TIF-funded programs show similar results. Two Iowa State University economists have done an assessment of that state's program, which seems to be almost identical to that being proposed in North Carolina. Their conclusion?

"[E]xisting taxpayers, its householders, wage earners, and retirees are aggressively subsidizing business growth and population via this practice... the overall expected benefits do not exceed the public's costs."

This does not mean that property values in the TIF areas did not grow. They did, as one would expect when large amounts of government subsidies are poured into an area. But the change in property values in one area says nothing about overall economic growth. There are hidden costs imposed on those living both inside and outside of the TIF area that must be factored in.

• Any new businesses that are attracted by the subsidies will pose a competitive threat to existing companies. Because of increased demand, labor and other resource costs both in and outside of the TIF region, will rise. This

will reduce economic activity in other areas, possibly putting marginal firms out of business. These firms will, in effect, be paying the subsidy that is going to the businesses favored by the TIF.

• If property values go up, previously existing businesses and homeowners have to pay additional property taxes, but they do not receive the benefits of the program.

**DR. ROY CORDATO**

The revenue from these higher tax payments will not be used to improve schools in the area or provide better services, but to pay back the bondholders.

• Population is likely to grow inside the TIF district at the expense of other parts of the region. With TIF subsidies in one area people are likely to migrate from other parts of the region to take advantage of the subsidized business environment. This will reduce demand for property outside the TIF district, driving down property values. This migration will also drive up labor costs in the non-TIF districts as the supply is reduced.

What all of this implies is that growth inside the TIF area is likely to occur at the expense of those who are already living, owning businesses, and paying property taxes in the region. The TIF program imposes a hidden tax on these other groups and is therefore inconsistent with sound principles of public finance and an open democratic process.

Under current law, the TIF-funded programs that are being contemplated by local government officials could proceed if the citizens in their communities supported them. The problem for spending-hungry politicians is that their constituents would probably vote the projects down if asked directly. Local citizenry are regularly making their position clear by defeating bond referendums to subsidize stadiums, civic centers, and similar ventures. In fact, North Carolina has turned back similar amendments that would have relieved TIFs from the constraints of voter approval twice before, in 1982 and 1993. If this amendment passes the full legislature, the electorate should show the same good sense and defeat it once again. *CJ*

How H.E.E.L.S. for Health Grows Our Economy

Flowchart illustrates why, when it comes to UNC's budget, we really can't afford to cut ANYTHING

By JON SANDERS
Assistant Editor

Budget crises affect families and businesses differently from how they affect public universities. Shortfalls affecting families and businesses precipitates cutting superfluous or marginal expenditures. Families might cut back on eating out, for instance, and businesses might cut back on employee perks. Public universities, however, *have* no superfluous expenditures, as every public-university advocate, from the system president down to the least of their six-figure lobbyists, will tell you. Furthermore, public universities need access to more and greater spending every year because public higher education drives the state's economy.

Politicized classes and departments, administrations grown thick with bureaucrats, light teaching loads for high-

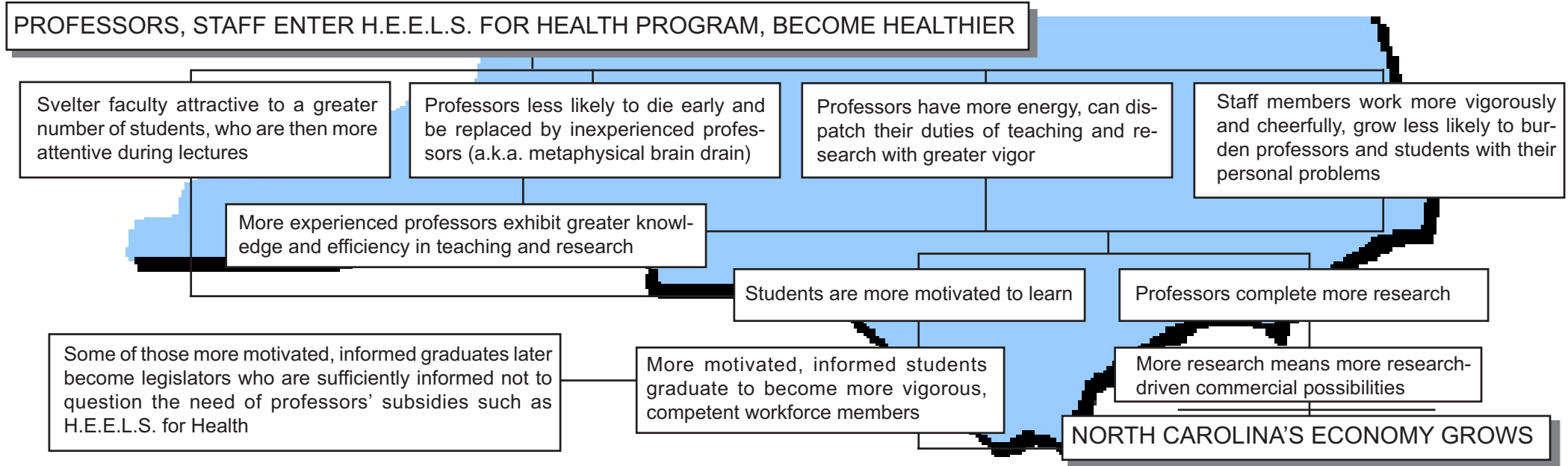
priced professors — all of those things look ripe for reform to the uninitiated, especially when public revenues fall. Unfortunately, just because the higher minds know better than to attempt the Herculean task of explaining it all before the masses, they weather the unfair accusation of aggrandizing their existence just to intimidate any fair-minded budget cutters from looking their way.

A recent example of this problem is the din raised over cutting the H.E.E.L.S. for Health program at the University of North Carolina at Chapel Hill. As explained in a Durham *Herald-Sun* article on May 24 entitled "State budget knife to cut deep at UNC," the program "provides personal training, health screenings, and diet and nutrition information for university employees free of cost, though members are charged an annual fee for use of its fitness center." The annual fee is \$120, or \$10 per month, for gym and pool privileges, according to the UNC web page

www.onecard.unc.edu/gympriv.html.

In other words, H.E.E.L.S. for Health is one of those programs that, in the dim vision of the hayseeds, looks for all the world to be a plum subsidy, given the usual costs of a health-club membership on the outside, and therefore not an important state budgetary concern in the least, especially during a protracted shortfall.

But as *CAROLINA JOURNAL* has learned and as the accompanying flowchart demonstrates, H.E.E.L.S. for Health is in fact a linchpin for the state's economy. It is a model for how public spending on UNC really does grow the economy. As such, the state could ill afford to cut the program out, especially now *during an economic downturn*. Which, if you think about it, is rather counterintuitive to the idea that the university grows the state's economy, since the university preceded the downturn. Obviously, it's best not to think about it. Ah, just look at the flowchart, OK? *cj*



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