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Basnight Faction Orchestrated Pipeline Project, Bonds

Senate leader drove legislation that favored nonprofit over companies

By PAUL CHESSER
Associate Editor

A taxpayer-funded natural-gas pipeline project for eastern North Carolina, at the center of a government conspiracy alleged by a Raleigh businessman, was facilitated through legislation pushed by State Sen. President Pro Tem Marc Basnight and steered to the control of his friends.

William Horton, president of The DFI Group, has sought unsuccessfully to build ethanol plants in eastern North Carolina for more than 20 years. He claims that since 2000, associates of Basnight have obstructed his plans to build plants in Martin and Beaufort counties because Horton was perceived as an obstacle to the Basnight faction's pipeline project.

In 1998 voters approved, by a 51 percent to 49 percent ratio, \$200 million in bonds to extend natural-gas pipelines to 22 unserved counties in the state.

However, the weight of Basnight's influence apparently enabled political allies in eastern North Carolina to manage \$188.3 million of the available funds. None of the money is likely to be paid back because the bond legislation doesn't require it, and because the pipeline project isn't expected to be economically feasible for decades, if ever.

Utilities Commission's influence

Political groundwork for the pipeline was laid in 1995, when Basnight sought to get his own choices appointed to the seven-member Utilities Commission. The governor officially nominates board candidates.

One nominee was Basnight's brother-in-law, Bobby Owens, a power in state politics. Owens had been the chairman of the Dare County (Basnight's home) Board of Commissioners. He also ran former Gov. Jim Hunt's eastern N.C. office.

Basnight wanted Hunt to appoint Owens to the Utilities Commission in 1995, but Owens withdrew from consideration after an uproar ensued over his lack of experience. Critics, including editorial writers of *The News & Observer* of Raleigh, de-



Workers install the natural-gas pipeline along U.S. 64 east of Williamston.

ridged the move as political patronage because Basnight waged a "blatant campaign" to get Owens on the commission. Owens added fuel to the fire by saying, "I have earned my right to the trough."

But Owens's name resurfaced for the position again two years later, and his nomination won legislative approval despite more criticism. The salary for the job was \$97,388 a year.

Another Basnight ally, former state Sen. Richard Conder of Rockingham, won an appointment to the commission in 1997 as well. Members of the commission serve eight-year terms.

North Carolina Natural Gas

Over time since the 1960s, the commission was gradually awarded exclusive franchise rights for northeastern counties to

North Carolina Natural Gas Inc. Still, the company did not provide natural gas to 17 of those counties because they lacked a sufficient number of potential, mainly industrial, customers.

In the early 1990s, state legislators created financing incentives for local natural-gas companies to extend service into unserved areas. The legislature also passed "use it or lose it" legislation in 1995, the same year Basnight tried to get Owens on the commission. The bill, sponsored by Rep. Bill Owens, D-Elizabeth City, another Basnight ally, required all franchisees to provide natural gas to at least part of the unserved counties by July 1, 1998, or else they would lose their rights to the territories.

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Ethanol entrepreneur was considered a threat to Basnight's pet project

By PAUL CHESSER
Associate Editor

In his pursuit to build ethanol plants in eastern North Carolina, DFI Group President William Horton says he unwittingly got on the wrong side of the most powerful politician in the state.

Economic developers' enthusiasm over Horton's promise to bring jobs and a market for locally grown farm products was tempered by his deals with outsiders to deliver natural gas to his proposed plants.

Horton attempted to work with South Carolina-based gas company SCANA Corporation and Texas-based El Paso Merchant Energy Corp. to deliver liquefied natural gas to the plants. Meanwhile, Senate President Pro Tem Marc Basnight promoted friends at the Albermarle Pamlico Economic Development Corporation in their effort to get up to \$200 million in taxpayer-funded bond money to build a pipeline in the east.

Horton explores ethanol in the east

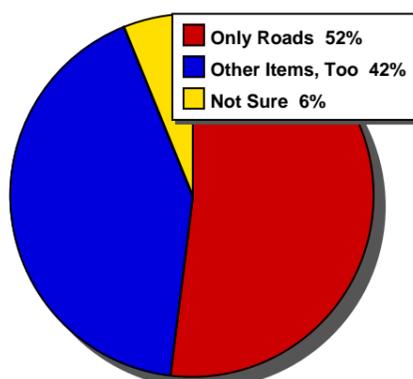
In early 2000, APEC and partner CP&L requested \$44.2 million in bond funds for the beginning phase of their project in northeastern counties. At the same time, Horton was planning the first of three proposed ethanol plants at a site near Williamston in Martin County. During the process, Horton was introduced to Rick Watson, president of North Carolina's Northeast Partnership, which shared its offices and staff with APEC. Horton discussed with Watson road and infrastructure improvements to the site of the proposed plant.

Access to natural gas was crucial to Horton's plans. Horton had reached a preliminary agreement with SCANA to explore the extension of a pipeline into eastern North Carolina to serve the ethanol plants. Little did he realize, however, that the SCANA project would pose a threat to the fledgling APEC-CP&L venture.

DFI's efforts to connect a SCANA pipeline to its plants repeatedly faced obstacles.

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NC Should Spend Gas, Car Taxes On . . .



% of N.C. Respondents in Oct. 2002 JLF Poll

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ON THE COVER

• A taxpayer-funded natural-gas pipeline project for eastern North Carolina, at the center of a government conspiracy alleged by a Raleigh businessman, was facilitated by State Sen. President Pro Tem Marc Basnight and steered to the control of friends under his direct influence. *Page 5*

NORTH CAROLINA

• U.S. Rep. Frank Ballance, D-1st, has come under scrutiny because hundreds of thousands of taxpayer dollars went to a non-profit counseling center he started, but the organization has failed to file reports required by state and federal law. *Page 5*

EDUCATION

• For a man whose passion is statistics, Dr. William Sanders has devoted much of his career to education, and now has spent the last 21 years putting both together with his unique student evaluation method. *Page 6*

• The success in the Supreme Court for voucher advocates hinged in large part on the legal concept of true private choice. Now that the federal question has been answered, has the door to voucher programs in the states been opened? *Page 7*

• In 1999, Salisbury native Julian Robertson, Founder of Tiger Management, contributed \$1.5 million to start Children's Scholarship Fund-Charlotte. In July, CSF-Charlotte will become its own nonprofit. *Page 7*

• In 1875 a proposed amendment to the Constitution would have prohibited pub-

lic school lands or tax funds from being divided between religious sects or denominations. The amendment failed, but today such provisions exist in 37 state-level constitutions. *Page 8*

• As North Carolina heads into the compliance phase of the No Child Left Behind education law, accountability experts must decide which students can legitimately be excluded from testing. *Page 9*

HIGHER EDUCATION

• Last year schools in the University of North Carolina system received \$123.6 million in "overhead receipts" from federal research grants, which state legislators would like to see go to the general budget. *Page 10*

• The latest case championed by the North Carolina Chapter of the Institute for Justice involves two cherished traditions in the state, freedom and sports. It also concerns a rapidly evolving form of journalism: online news media. *Page 11*

• Unethical behavior is rampant on college campuses and in society today, the director of the Kenan Institute for Ethics at Duke University said at a luncheon sponsored by the John Locke Foundation on April 28. *Page 12*

• *The Daily Tar Heel* April 24 reported that "A woman is raped every two minutes," but no sources for this information were given — mildly surprising since UNC-CH has a well-respected school of journalism. *Page 13*

LOCAL GOVERNMENT

• For state residents, rain and its runoff

have become yet another excuse for cities and towns to raise taxes. *Page 14*

• N.C. Department of Transportation officials are examining the possibility of rebuilding Interstate 95 through toll collections under a federal pilot program, but it will be several years before anyone pays to drive on the interstate. *Page 15*

• An interview with Fern Shubert, state senator from Union County. *Page 17*

THE LEARNING CURVE

• Reviews of *All the President's Children: Triumph and Tragedy in the Lives of America's First Families* by Doug Wead, and *The New White Nationalism in America: Its Challenge To Integration* by Carol M. Swain. *Page 18*

• A review of *Bountiful Harvest* by Thomas R. DeGregori, and a look back at Ayn Rand's *The Fountainhead*. *Page 19*

OPINION

• An editorial on the record of Mike Easley as governor. *Page 20*

• Michael Walden tells how North Carolina got into its budget problems. *Page 22*

• Richard Wagner says another of the bad ideas that refuse to die is the "Dream Act," which allows illegal immigrants to enjoy privileges without earning them. *Page 22*

PARTING SHOT

• Paul Chesser offers solutions the state can implement to stave off the latest threat to fairness in life: "Fat-finger dialing." *Page 24*

Calendar

Former Attorney General Edwin Meese III to Speak in July

The John Locke Foundation will welcome former U.S. Attorney General Edwin Meese III for a Headliner luncheon at noon July 8 at the Brownstone Hotel in Raleigh.

Meese is a distinguished visiting fellow at the Hoover Institution. He was the 75th attorney general of the United States, under President Ronald Reagan, from February 1985 to August 1988.

Meese is an expert on the U.S. legal system, law enforcement and criminal justice, intelligence and national security, and the Reagan presidency. His current research focuses on the criminal justice system, federalism, emergency response management, and terrorism.

His memoirs were published in the 1992 volume *With Reagan: The Inside Story* (Regnery Gateway Publishers).

Meese is also a distinguished fellow and holder of the Ronald Reagan Chair in Public Policy at the Heritage Foundation; a member of the Board of Regents of the National College of District Attorney; distinguished senior fellow, Institute for United States Studies, University of London; and a member of the boards of directors of both the Capital Research Center and the Landmark Legal Foundation.

Before serving as U.S. attorney general, he was counselor to the president from 1981 to 1985. In this capacity he functioned as the presidents chief policy adviser and had management responsibility for the administration of the cabinet, policy development, and planning and evaluation.

During the time he held both these positions, Meese was a member of the president's Cabinet and the National Security Council.

Meese headed the president-elect's tran-



Edwin Meese III

sition effort following the November 1980 election. During the presidential campaign, he was chief of staff and senior issues adviser for the Reagan-Bush committee.

Formerly, he served as Governor Reagan's executive assistant and chief of staff in California from 1969 through 1974 and as legal affairs secretary from 1967 through 1968.

Before joining Reagan's gubernatorial staff in 1967, Meese was deputy district attorney of Alameda County, Calif.

From 1977 to 1981, Meese was a professor of law at the University of San Diego, where he was also director of the Center for Criminal Justice Policy and Management.

In addition to his background as a law-

yer, educator, and policy official, Meese has been a business executive in the aerospace and transportation industry.

From January 1975 to May 1976, he was vice president for administration of Rohr Industries in Chula Vista, Calif. He left Rohr to enter private law practice in San Diego County.

He is active in numerous civic and educational organizations and was appointed by Reagan to the Board of Visitors of the U.S. Military Academy at West Point.

Meese is a graduate of Yale University (1953) and holds a law degree from the University of California at Berkeley.

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 foundation's offices in downtown Raleigh at 200 W. Morgan St., Suite 200. Parking is available in nearby lots and decks.

"Carolina Journal Radio"

Next month's issue of *Carolina Journal* will provide more details about a new weekly radio program based around the newspaper and its editors and writers. In the meantime, however, CJ readers who might be interested in subscribing to a monthly CD version of the program should call Kory Swanson at (919) 828-3876. *cj*

NCNG Forced Out of the Northeast, Basnight's Friends Move In

Continued From Page 1

When the three-year time limit expired in 1998, the commission determined that NCNG's franchise for the 17 northeastern counties should be reviewed.

While NCNG's future in the northeast came into question, lawmakers in the early summer of 1998 approved the \$200 million bond referendum. Advocates thought the funds could make service to NCNG's unserved territories more appealing.

Creation of AREA

But long before the commission called for hearings on NCNG's franchise, competition for the territory, and eventually the bond money, materialized.

In 1997 Rep. Owens introduced another bill, which passed unanimously, that allowed cities and counties to create natural-gas districts.

In January 1998 the counties of Chowan, Pasquotank, Currituck, Camden, and Perquimans; the city of Elizabeth City; and the towns of Edenton, Hertford, and Winfall teamed up to create a natural-gas district called the Albemarle Regional Energy Authority. The group was led by then-Pasquotank County commission chairman Jimmie Dixon, another Basnight ally.

Minutes from a Pasquotank commissioners' meeting Feb. 2, 1998 said, "Commissioner Dixon stated it is being recommended that the [member counties and municipalities] pass a resolution of support for Sen. Basnight's efforts to obtain natural gas for the area and to also establish a [gas] authority..." The minutes don't state who made the recommendation, but Basnight apparently played an important role.

"They said [Basnight] was the driving force behind creating their group," said Brian Kennedy of Columbia Gas Transmission, one of the companies that later tried to work with the group. When contacted by *Carolina Journal*, a Basnight spokesman declined to comment about the matter.

The group planned a trip to Raleigh April 21, 1998 to meet with Basnight. Dixon reported to his fellow commissioners after the meeting that members of the natural-gas committee met in Basnight's office with Gisele Rankin of the Utilities Commission Public Staff and the senator's general counsel at the time, Norma Mills.

According to AREA meeting minutes, the group "asked Mrs. Mills if we were heading in the right direction. She agreed that we were and encouraged us to form an authority and to talk with the various gas companies to see what proposals they would



Senate Pro Tempore Marc Basnight

make."

NCNG's future hadn't yet been resolved, and the bond referendum wasn't on the ballot yet, but AREA positioned itself to take over the franchise anyway.

At a Pasquotank commissioners' meeting Aug. 3, Dixon said the authority had the support of the Utilities Commission. "Mr. Dixon noted that although there are other regions in the state interested in forming natural gas authorities, the Albemarle Regional Energy Authority would be the first to receive funding for expansion of natural gas," according to the minutes of the meeting. Dixon repeated the claim at the commissioners' meeting in September.

Dixon also did not respond to questions submitted by *CJ*.

AREA vs. NCNG

Despite its failure to extend service to 17 counties in its franchise territory, NCNG decided to defend its rights to the rural areas because of the prospect of bond money. The company planned to provide service immediately in Pasquotank, Camden, Onslow, Bertie, and Martin counties. Still, AREA and other political and business leaders vigorously opposed continued franchise rights for NCNG.

NCNG was less committed to serving 12 other counties without outside funding: Washington, Carteret, Pender, Chowan, Currituck, Dare, Gates, Hyde, Jones, Pamlico, Perquimans, and Tyrrell.

"NCNG is very interested in serving all unserved areas," Terrence Davis, former senior vice president of operations for the company, said in written testimony. But



Former Dare County official Bobby Owens

Davis said the small number of potential customers and shortage of "industrial load" made the prospect unattractive.

"In the event the bond referendum is approved by the voters," Davis said, "NCNG believes that it, among all potential service providers, would be in the best position to make the most efficient and effective use of these funds..."

The first public hearing on NCNG's franchise rights for the northeast counties was scheduled for Oct. 27, 1998, one week before the vote on the referendum.

Of the 17 individuals who testified against NCNG, 16 represented AREA-related entities. One of the most repeated complaints was that NCNG had the exclusive franchise for 40 years and did nothing with it. Officials also testified that because natural-gas service didn't exist in the region, it harmed their ability to attract business and industry.

Dixon testified that because of the lack of natural-gas service, "we are eliminated from 40 percent of all the industrial clients that come to North Carolina."

Referring to earlier testimony by Pasquotank's director of economic development, Randy Harrell, Dixon said, "...he's had clients that come, fly in at the local airport and once they hopped off the plane the first question was, do you have natural gas availability?"

"And [Harrell] said, 'no.' And so they turn around and got on a plane and left. They weren't even interested in looking at us."

Dixon asked the Utilities Commission to allow AREA "to be the appointed franchise of the five-county area." He said his

group could then negotiate with another company with natural-gas expertise.

Gas interest hinged on bond funds

Natural-gas companies didn't seem interested in serving the northeast counties until the referendum passed Nov. 4.

AREA's meeting minutes before the election show discussions with only one gas company, Frontier Energy, which said its interest in the northeast was contingent upon passage of the referendum.

After the referendum passed, other companies courted AREA officials aggressively, even though bond awards wouldn't be decided for months and the commission had just begun hearing testimony about NCNG's franchise.

Later in November 1998, Carolina Power & Light announced that it would purchase NCNG and that it hoped to get bond money to provide natural-gas service to the northeast counties. AREA lawyer Allyson Duncan told AREA officials that CP&L was interested in working with them. However, CP&L stayed on the sidelines while the APEC-NCNG battle ensued.

Several other natural-gas companies, from inside and outside of North Carolina, were also eager to team with AREA on a pipeline project. However, none of those companies' representatives interviewed by *CJ* could explain why they didn't pursue the franchise for themselves. They all ceded the territory to AREA.

Fight for franchise and bonds

The battle between AREA and NCNG over the franchise escalated in pleadings before the commission. Duncan and NCNG lawyer Edward Finley Jr. engaged in several motions to gain an upper hand before the commission.

Finley requested from AREA its plans to provide natural gas to its five-county region, a move Duncan called harassment.

"AREA's expressed position is [to] deny NCNG's request," Finley said, "so as not to foreclose AREA's opportunities to provide natural gas serv[ice] in the northeastern counties."

In other written testimony, Gerald Teele, NCNG senior vice president and treasurer, argued that NCNG would have had to dramatically increase rates its other customers paid if it had extended service into the northeastern counties. He also said the commission would have frowned upon such

Continued as "Basnight," Page 4

Basnight and His Allies Held a Grudge Over Natural Gas, Horton Says

Continued From Page 1

The two parties broke off their agreement when DFI was unable to get its plants off the ground, SCANA spokesman Robin Montgomery said. Horton said he was unaware that APEC-CP&L was planning a pipeline when he started working with SCANA.

Horton said SCANA officials told him they backed off because of pressure from CP&L in North Carolina. Horton said Watson had told him to "stay under the radar screen" on his project with SCANA, and that DFI would not get environmental permits from the state until the Utilities Commission approved bond money for APEC's pipeline.

After the arrangement with SCANA failed, but still maintaining hope for a site in Martin County, Horton turned his attention to another site on Radio Island, in

Morehead City's harbor.

Including in the plan was the delivery of liquefied natural gas to the Radio Island site and the barging of natural gas to the Martin County plant on the Roanoke River. DFI reached an agreement with El Paso Merchant Energy Corp. of Houston to transport liquefied natural gas.

Plans for the Radio Island project, however, didn't get very far. Citizens of Carteret County, especially in Morehead City and Beaufort, opposed the plant. DFI abandoned its plans for Radio Island in February 2001. But later in February the State Ports Authority granted El Paso an option to lease land on Radio Island for a gas terminal. Again unknowingly, Horton had ushered in potential competition to the APEC-CP&L (now called Eastern North Carolina Natural Gas) gas pipeline project in the east, this time just as it was about to apply for the

remaining \$149.6 million in natural-gas bond funds.

Horton said that in hindsight his agreement with El Paso "was the beginning of the demise of our relationship with the Northeast Partnership," because it posed a threat to the eastern North Carolina pipeline project. He repeatedly had difficulty getting environmental permits for his ethanol plants.

Horton alleges conspiracy

Despite ENCNG's success winning \$188.3 million in bond funds, Watson and Basnight's other political allies in eastern North Carolina apparently held a grudge against Horton because of his attempts to find a competing supplier of natural gas. Former Wake Forest Mayor Jim Perry rekindled a friendship with Horton in No-

vember 2001 on the basis that he could help smooth over sore feelings with Basnight, whom, he said, also was a friend of his. Perry said he could help Horton get political support for his projects.

Horton said associates of Basnight's told him on many occasions that he would never get permits for his plants because of Horton's perceived interference in Basnight's plans to bring natural gas to eastern North Carolina.

Horton alleges that officials, including Watson and Perry, launched an attempt to take over his ethanol investments by invoking Basnight's political power. He said the officials threatened that if he didn't sell his proprietary information and knowledge to them, they would put him out of business. Since then, loans to Horton have been recalled and lines of credit to him have been cut off.

Basnight-Backed Nonprofit Got More Than \$188 Million in Bonds

Continued From Page 3

an action.

"It must be borne in mind that in the absence of the \$200 million in bond funds," Teele said, "none of these parties would be coming forth with...a viable, economically feasible plan..."

Enter Basnight

Debate about NCNG's franchise came to a head Dec. 7-8, 1998, when the commission conducted hearings in Raleigh. Basnight, in a statement read by Mills, weighed in with a passionate argument against NCNG.

"Perhaps NCNG now intends to expand into the northeast by applying for some of the recently approved bond proceeds," Basnight said. "Despite the availability of these proceeds, however, I do not believe that NCNG should be granted an extension of the exclusive franchise..."

Then Basnight said the idea for a referendum existed as far back as 1995, at the same time the "use it or lose it" law was passed and he tried to get Bobby Owens on the commission.

"The natural-gas bond legislation was just barely a dream in my mind and in the minds of other legislators when the General Assembly enacted the 'use it or lose it' legislation," Basnight said.

During the hearings, Owens was one of the most active interrogators among the commissioners. More than other commissioners, Owens's questions to NCNG's opponents elicited answers about the northeast region's plight without natural-gas service. On the other hand, Owens's questions to Davis pointedly challenged him about the long period of time the company held the franchise rights but failed to provide service to most of the area.

According to minutes of AREA's meeting Dec. 14, Duncan told the group, "North Carolina Natural Gas became very contentious during the hearing, and questions from the Utilities Commission were very hostile." The minutes said Duncan "felt extremely positive about the hearing."

The commission decided March 17, 1999 that NCNG could retain its franchise in only Bertie, Martin, and Onslow counties, and that NCNG must forfeit its rights to the 14 other counties.

The timing of legislation, the strategy of NCNG's opponents, and the makeup of the commission wasn't a coincidence, some observers said.

"I think it was a master plan [AREA and Basnight] had," said a retired gas-industry executive who didn't want to be identified. NCNG never had a chance, the executive said.

"That hearing was the only time I thought the decision had already been made," he said, "because of pressure from Basnight. With (Bobby) Owens (on the commission), it was like having Basnight himself there."

Another observer of the NCNG proceedings said, "Senator Basnight is a powerful legislator. [AREA] had the political support and took advantage of it."

Utilities Commission Chairman Jo Anne Sanford told *CJ* that commissioners abide by strict rules of judicial conduct.

"We don't foretell decisions," she said. "We don't say we're going to do this or that on official decisions."

After the decision Sanford told *The News & Observer* of Raleigh, "It will be a free-for-all, in a good sense of the word. The franchise that prevented anybody else from providing gas service will no longer act as a barrier."

NCNG filed for an appeal of the commission's decision, and CP&L remained in the background despite its pending purchase of the gas company.

AREA, APEC & CP&L

AREA met March 8, 1999, nine days before the commission's decision on the franchise, and set a deadline of April 1 for submission of proposals from private companies "for providing natural gas to our area," according to meeting minutes.

On April 20 AREA's directors decided to enter negotiations with CP&L to provide natural-gas service to unserved areas. AREA would request "that CP&L restrain NCNG as much as possible from proceeding with their appeal to the Utilities Commission," according to meeting minutes. Within months the CP&L-NCNG deal was consummated and the appeal was dropped.

As discussions progressed and the franchise for the 14 unserved counties opened, AREA and CP&L decided they would join in an attempt to get the rights and bond money for the whole region. As a result, AREA officials began discussing a conversion into a nonprofit organization. All the wrangling between AREA and NCNG became moot.

Suddenly, minutes of meetings by AREA officials and Pasquotank County commissioners that previously had detailed discussion about natural-gas service failed to provide information on the issue. Beginning in June 1999, discussions about formation of the nonprofit, except for AREA directors approving the reorganization, were shrouded in secrecy.

What emerged from the process was the Albemarle Pamlico Economic Development Corporation, which represented the 14 counties that NCNG lost. A representative from each county was appointed by their respective commissioners, and the new group assumed the partnership with CP&L.

Other documents obtained by *CJ* provide some insight to APEC's creation. In an appeal to the IRS for 501(c)(3) status, APEC stated that "Marc Basnight is... a driving force behind forming APEC and securing the bonds for the pipeline."

Dixon was elected chairman of APEC. The presence of R. V. Owens III on APEC's board of directors further strengthened Basnight's influence on the corporation. Owens, the son of Bobby Owens, is Basnight's nephew and one of his key political operatives. He also is a prolific fundraiser for Democrats.

According to an article in the March 2002 newsletter of the North Carolina Citizens for Business and Industry, R.V. Owens III "...combines his fierce determination on behalf of economic development for Northeastern North Carolina with his realization that technology is the best hope for speeding up the process. Owens and others recognize the lack of natural gas and high-speed Internet access in most of the region is a negative. Ever the visionary, Owens led others to wonder aloud why fiber optic cable couldn't be laid at the same time in the 800-mile trench for the natural gas pipeline that is being dug."

Seeking bond funds

In the only minutes of APEC meetings obtained by *CJ*, county members were told that the corporation would aggressively

seek the franchise and bond money and that it would "loan" its name to CP&L. Under the APEC name, CP&L would own both the transmission and distribution lines and submit a surcharge or royalty to APEC, even though taxpayers served as the money source. While CP&L would own the system, APEC would have input about the placement of distribution lines.

On Oct. 26, 1999, APEC and CP&L notified the commission that they would apply for the exclusive franchise for the 14 counties and for \$197.5 million in bond funds. Commissioners said that in the first hearing they would consider only Phase 1, which would serve the six northeastern-most counties of the 14, for the first round of bond money. APEC and CP&L sought \$44.2 million for Phase 1.

Sanford's prediction of a "free-for-all" for the franchise never materialized.

Utilities Commission considers plan

As the commission's hearings progressed, CP&L and APEC formed a separate corporation, called Eastern North Carolina Natural Gas, and substituted it instead

of APEC as the applicant for the franchise and bond funds. Both APEC and CP&L (now Progress Energy) own equal stakes in ENCNG.

In testimony before the commission, some groups expressed concern about parts of ENCNG's proposal, especially the need for almost all of the \$200 million in bond funds. The Carolina Utility Customers Association argued that it should be allowed to participate in commission hearings about ENCNG's request.

"If [ENCNG] is going to try to get all of this money which is designed for the entirety of this state..." said lawyer James West, "...I believe we have the right to intervene and determine whether the project is of such significance and of such benefit that they should, in fact, get that amount of money."

The commission heard testimony April 12 on ENCNG's bond and franchise request for the 14 counties. The hearing again drew the interest of the northeast's most influential advocate: Basnight.

In a statement read by Mills, Basnight thanked the commission for its decision to strip NCNG of its franchise, "because it paved the way for what is before you now."

Basnight asked the commission to support APEC's (ENCNG's) plan because "it provides the hope of opportunity for enhanced economic development to our region as a whole..." He also argued for the entire 14-county franchise and for the commission to earmark the entire \$197.5 million requested by ENCNG, even though the panel was considering only Phase 1.

"Without the promise and commitment of bond funds," he said, "the award of a franchise is meaningless for us."

"I urge you to consider the application as a whole, because the needs of our region need to be addressed as a whole."

Basnight also called for the closure of the application process for bond funds. Only Frontier Energy had submitted other proposals, to serve Warren, Ashe, and Alleghany counties, for a total of about \$11 million. Together with ENCNG, the total amounts requested by the two applicants exceeded the \$200 million available.

On July 12, 2000, the commission awarded \$38.8 million to ENCNG for Phase

1 of its project. With no oncoming proposals on the horizon, the commission closed the application process.

"We expected a lot more to apply," Rankin said. "I think a lot of [the companies] viewed it as a dicey proposition."

An easy \$150 million

Between Frontier and ENCNG, the commission had already awarded \$50.4 million in bond funds. In March 2001, ENCNG requested the remaining \$149.6 million in available money for the remaining eight counties of its project.

The commission granted ENCNG's request by early June, since little objection was raised against the request. Still, some observers were surprised that the 14 counties ended up with more than 93 percent of the bond funds. One gas-industry executive said he thought the area would never get more than 50 percent of the money.

"I thought it was a statewide thing," he said. "I thought the (Utilities) Commission would want to do the right thing."

"But then I thought about it and said, 'well, look who's driving the train: Marc Basnight.'"

The executive said he thought NCNG was doing its best to "chip away" at serving the rural northeast.

"But it wasn't the grand scheme that (APEC leader) Jimmie Dixon and Basnight wanted," he said.

East benefits from state debt

So far, ENCNG has about 350 customers for Phase 1 of the project. CP&L, now Progress Energy, is selling the \$7.5 million stake it invested in the venture to Piedmont Natural Gas Corp. CP&L began buying gas companies in the late 1990s because electric companies expected deregulation, which made purchasing sources of power appealing. Deregulation never happened, and now Progress is getting out of the gas business.

ENCNG's board consists of four APEC directors and four Progress Energy executives. It includes Dixon and John Hughes, president of APEC. Hughes is chairman of ENCNG's board. Norma Mills is the ninth member of the ENCNG board and breaks all tie votes. Dixon is chairman of APEC's directors.

ENCNG pays Progress Energy (and a few other contractors) for administrative costs, operations, maintenance, construction of the pipeline, and its distribution network. ENCNG appears to exist only as an entity to receive bond money allocations, to pay Progress Energy for its services, and to pay APEC for some economic development efforts.

The project involves installing about 750 miles of steel gas-transmission lines and plastic distribution lines throughout eastern North Carolina. Municipalities including Elizabeth City, Plymouth, and Morehead City are receiving natural gas for the first time. The project should be completed by late 2004, but several of ENCNG's counties are not served yet. The company is up for a Utilities Commission "use it or lose it" review for those counties this month.

When the referendum was originally presented to voters statewide, the legislation stated the money would be issued as grants or loans, to benefit unserved counties throughout the state. Former state Treasurer Harlan Boyles's prophesy that the funds would become taxpayer subsidies appears accurate. Most observers believe that the money is a grant, not a loan.

"Once the project is deemed feasible, it has to be paid back," Rankin said. "No one expects it to be feasible anytime soon." *CJ*

Free DWI program violated state law**Investigations Widen Into Ballance's Foundation and Campaign**By DON CARRINGTON
Associate Publisher

A few months after being sworn in to Congress, Rep. Frank W. Ballance, Jr. is trying to answer questions about accounting procedures of a nonprofit foundation of which he is the chairman.

In addition, the State Board of Elections is investigating Ballance for his failure to respond to requests that he explain discrepancies on his 1999 and 2000 Financial Disclosure Reports.

The John A. Hyman Memorial Youth Foundation, which claims to run substance-abuse programs, is totally funded through the state budget. Ballance helped start the foundation, and as a state senator arranged about \$2 million in funding, which it has received since 1993. The foundation's top three staff members have close relationships with Ballance.

The foundation failed until recently to file financial statements required by the state and the Internal Revenue Service. The State Auditor and the IRS are investigating the organization and its substance-abuse program.

Officials are also investigating the foundation's driving-while-impaired treatment program for possible violation of state laws.

Stories first published by the *Littleton Observer* reported that Ballance and other foundation officials did not provide information on the program or return phone calls. *Carolina Journal* then reported that the foundation failed to file state and federal financial reports. Ballance acknowledged the failure and foundation officers submitted the state reports, but at press time they had not filed federal reports.

CJ has also uncovered a close correlation between pastors that gave to Ballance's 2002 campaign for Congress and the churches that received "prevention mini-grants" from the foundation.

DWI treatment violations

The foundation runs a state-approved DWI program free at the Greenwood Baptist Church in Warrenton. While the program itself may conform to state guidelines, offering it for free is a violation of state law.

A DWI offender must attend a class to get a driver's licence reissued. The foundation's program is licensed by the state as an outpatient substance-abuse facility. The program's original license was issued in 1994 and the DWI classes were authorized in 1998.

Lisa Hayes, the instructor at Greenwood Baptist Church, is paid \$10,000 per year directly from the foundation. Director Eddie Lawrence told *CJ* that Hyman students pay nothing. State DWI program officials said the foundation does not have a waiver to exempt enrollees in DWI classes from paying for the class. They noted that paying for a DWI class is part of the punishment for receiving a DWI conviction.

First- or second-time offenders are typically required to have from 10 to 40 hours of class. The going rate for the instruction across the state is about \$10 per hour, so a 20-hour course would cost each person \$200. State law requires a student to pay a minimum fee of \$75 for the class.

Spencer Clark, the DWI section's di-

rector of operations and clinical services in the Division of Mental Health, told *CJ* he initiated a review of the Hyman program after he was first informed by *CJ* that the foundation's students were attending class for free.

Frank's foundation

The articles of incorporation for the Hyman Foundation were filed with the North Carolina secretary of state June 28, 1985. Ballance, in his second term in the state House, was one of the 24 founding board members. The stated purpose of the organization was to engage in activities designed to facilitate the physical, mental, and intellectual development of young people, with a particular emphasis on residents in Warren, Halifax, Northampton, Bertie, and Martin counties. The address for the foundation was 113 West Market St. in Warrenton, the same address as Ballance's law office.



Rep. Frank Ballance

On Dec. 9, 1985, the IRS approved the foundation's application for tax-exempt status as a 501(c)(3) organization. In the approval letter, Ballance, or whoever was reading the foundation's mail at 113 West Market St., was notified that the foundation was required to file a Form 990, Return of Organization Exempt from Income Tax, if annual gross receipts were more than \$25,000.

CJ has obtained information that indicates the organization has had gross receipts of more than \$25,000 for at least the past nine years. Ballance recently admitted that the organization has never filed a Form 990 and has promised to file the forms.

Records indicate that Ballance played a major role, if not the sole role, in securing state funding for the foundation.

In 1996, the foundation received \$140,000 from a Health and Human Services discretionary fund controlled by Sen. Marc Basnight. Before receiving payment, the foundation had to submit information to the agency's chief budget officer. A January 1997 transmittal letter accompanying the information was signed by Ballance as chairman of the board.

According to minutes from a March 7, 2001 Joint Appropriations subcommittee on justice and public safety meeting, Ballance introduced Eddie Lawrence and Melinda Solomon-Harris, the top two staff members of Hyman's substance-abuse program, to the committee to make comments about the program and make the case for continued funding. Ballance was vice chairman of the committee, but according to the minutes, he did not reveal his role as chairman of the foundation.

Friends of Ballance

The three top paid staff members of the foundation have close ties to Ballance. The salaries of the staff members were based on information Ballance released to the *Roanoke Rapids Daily Herald*.

Eddie W. Lawrence was paid \$30,000 per year as director of the foundation. He was also paid \$66,351 for his full-time state job as director of the Human Relations Com-

mission. The foundation's office for the last several years has been at Greenwood Baptist Church, where Lawrence is also the pastor.

Financial statements, belatedly submitted by Lawrence on April 28, 2003, state that for the year ending June 30, 2002 the foundation paid \$1,800 in rent. For the previous year the foundation paid his church \$35,000 in rent, with a note saying that it was for the period March 1, 1996 through Aug. 31, 2000. Ballance is chairman of the church's Board of Deacons.

Lawrence, at Gov. Mike Easley's request, resigned from his state government job April 22 after news reports revealed that he had not listed his income from the foundation on economic interest statements.

Melinda Solomon-Harris was paid \$24,200 per year as a director of the foundation for Halifax County. She was a public schoolteacher until July 2002, when she became assistant principal of Weldon High School in Halifax County. Her salary at the school is \$41,970.

Principal David Jones said that he was unaware of her role with the foundation, but that his school system did not have a policy regulating secondary employment.

She is also the Democrat Party's First Congressional District Chairwoman and held the position during the 2002 Democratic primary, which Ballance won.

The Ballance campaign paid Solomon-Harris \$500 for Get-Out-The-Vote activities in that primary.

Joyce L. Bullock was paid \$14,400 per year as an administrative assistant for the foundation. She is also a member of the foundation's board and on a report submitted April 28 to the Department of Correction she cosigned the cover letter as treasurer of the foundation.

She worked as a secretary at Ballance's Warrenton law office and was his legislative assistant in the General Assembly. She has been a secretary at Warren County High School since 1997.

Bullock was the official treasurer for all of Ballance's state Senate and congressional campaigns, but her real role is not clear. She recently told the *Rocky Mount Telegram* that she had no knowledge of the reports. "You need to call the congressional office. I didn't directly do them. My name is just on them," she told the paper.

"Faith-based initiative"

A "faith-based initiative" is how Ballance described the foundation's substance-abuse program when he was defending it to *The Wilson Daily Times* on April 18.

While Ballance admitted paying churches to deliver services, he said there is no relationship between those payments and campaign contributions from several pastors.

"There is absolutely no connection, because there is no way I could have dreamed up that one day I would need these monies for an election," Ballance told the *Rocky Mount Telegram*.

Ballance received at least \$25,000 from 23 pastors and their families for his 2002 election. At least 12 of the pastors received grants for their churches from the foundation. More connections may surface when the foundation files the required reports with the IRS.

CJ compared Ballance's Federal Elec-

tion Commission report with the foundation's grant information that Ballance released to the *Roanoke Rapids Daily Herald*, which reported it May 2. Among the givers whose churches also received funding from the foundation are:

- United Solid Rock Church in Norlina received \$6,500 from the foundation, and its pastor, Moore Bynum, gave Ballance \$1,000.

- White Oak Baptist in Enfield received \$7,500, and Pastor Ray E. Bynum gave \$1,500.

- Nebo Baptist in Murfreesboro received about \$70,000 over the past five years, and pastor Robert Holloman and his family gave Ballance \$4,000.

- Greenwood Baptist received more than \$30,000 in rental payments for office space. Lawrence gave Ballance \$2,000.

- Oak Grove Baptist in Littleton received \$7,500, and Pastor David Moore and his wife gave Ballance \$2,400. Ebenezer Baptist in Rocky Mount received \$7,500, and Pastor Thomas L. Walker gave \$1,500.

Ballance also directed money to other organizations. *The Warren Record* reported in December 2002 that the Norlina Public Library received a \$5,000 grant from the foundation "through the efforts of Congressman Frank Ballance."

The library donation was not listed with the information the foundation released to the *Daily Herald*.

Financial discrepancies

CJ also found several discrepancies between the unaudited statements on file with the General Assembly for the past two years and audited financial statements submitted to the Department of Correction April 28.

Among the discrepancies for the year ending June 2001 were \$228,951 for salaries in the first report versus \$101,670 in the audited report; and \$2,871 for contractual services versus \$12,393 on the audited version. For the year ending June 2002, the first report stated \$75,346 for "prevention mini-grants," while the audited version stated \$47,500. Also appearing on the audited report was \$25,000 for "administrative fees" — a category not listed on the original report.

The audited report also noted that as of June 30, 2002, the foundation had a \$100,000 certificate of deposit held in reserve for future expansion.

Campaign finance violations

Ballance's failure to report extends beyond the Hyman Foundation to his last campaign for state Senate.

On March 29, 2001, Joyce L. Bullock, treasurer of the Committee to Elect Frank W. Ballance, Jr., received a letter from the State Board of Elections asking her to clear up several problems with the 1999 and 2000 campaign finance reports.

One specific problem was a \$2,473 contribution from Solomon-Harris and a matching refund that was not explained.

The board's records indicate that Bullock did not respond. On May 14, 2001 the board issued Bullock a final notice threatening to issue a letter of noncompliance after May 29, 2001. Bullock did not respond again.

On July 30, 2001 the board's general counsel Don Wright wrote directly to Ballance at his legislative office and gave him one more chance to respond. Ballance did not respond.

Election board Deputy Director Kim Westbrook told *CJ* that she is now pursuing the matter. *CJ*

NC News in Brief

- Former state Sen. Howard Lee was installed in May as chairman of the State Board of Education. Lee, the first black to hold the position, succeeds retiring Chairman Phillip J. Kirk.

The chairman serves a two-year term, which will expire March 31, 2005. Lee was appointed April 29 to an eight-year term on the board.

- The *News & Observer* of Raleigh reports that the North Carolina Senate is considering a law that would limit the total number of testing days to five for public school students. The bill is sponsored by Sen. Tom Apodaca, R-Henderson. The legislation would also replace state-created tests with nationally normed tests written by outside testing agencies. A switch to the outside tests will mean that North Carolina students can be measured against students elsewhere in the country.

- The House agreed to raise the cap on charter schools to 110 in the state. Charter school students, teachers, and principals met at the General Assembly on April 30 to greet their representatives and inform them about their schools. About 800 students from schools as far away as Charlotte participated in the event, said Roger Gerber, president of the League of Charter Schools.

- The U.S. Department of Education has approved North Carolina's compliance plan for the No Child Left Behind law. About 25 percent of states have received approval so far. State preparations for compliance include new accountability measures, measurement plans for adequate yearly progress for students, and requirements for teaching staff. All students in the state must reach proficiency by 2013-14, according to the law.

- The *News & Observer* reports that students in some neighborhoods in Wake County will no longer have an option to attend year-round or traditional-schedule schools.

The Wake County School Board has voted to require every year-round school to be "pegged" to a neighborhood. Students who receive free and reduced-price lunch may make up 10 percent more of the student body than at a traditional school in Wake County. This means that 50 percent of the student body, rather than the nominal maximum of 40 percent, can consist of needy students under the new plan. Details of which neighborhoods will be included have not been finalized. The changes won't take effect, planners said, until the 2004-05 school year.

- Approval for a physical education requirement by the North Carolina House came in April, according to the *Winston-Salem Journal*. The proposal requires that children in kindergarten through the eighth grade get 2 1/2 hours of physical activity during each school week. Some teachers and administrators object to the requirement, which they say places an added burden on schools. Senate approval is still pending.

Statisticians Do a Number on Schools

Inventor discounts class size, says his system shows critical impact of teachers

By KAREN PALASEK

Assistant Editor

RALEIGH

For a man whose professional passion in life is statistics, Dr. William Sanders has devoted an enormous amount of his career to education. The last 21 years, in fact. Sanders doesn't necessarily mind, although he shrugs his shoulders in some wonderment at the whole notion. "This is not something that I planned," he said. "This is something that fortuitously happened 21 years ago."

The "something" Sanders mentioned is his off-the-cuff invention of a system to evaluate student achievement gains. Speaking at a North Carolina Education Alliance Headliner luncheon inside North Carolina State University's McKimmon Center, Sanders related the unintentional development of the value-added student assessment method. Along with Dr. June Rivers, Sanders now heads the Value-Added Assessment and Research Program at the SAS Institute in Cary, N.C.

A better example

While a faculty member at the University of Tennessee at Knoxville, Sanders noticed a news item criticizing the use of achievement data and statistics in student assessment. He noted that the news conclusions were correct, but for the wrong reasons. When Sanders walked into his advanced linear modeling techniques class, he cited the news story's faulty statistical method. Sanders said he "pulled the value-added system out of the air" as counterpoint to the botched news report. The method Sanders outlined, in a spontaneous classroom example, eventually became the cornerstone of Tennessee's student assessment system.

What schools needed, Sanders knew, was a method for assessing gains in student achievement over time, using a technique that would stand up to the usual problems that frustrate that type of data collection. Those problems include incomplete data, following each child's individual progress, and establishing a baseline for the change in each child's performance.

Sanders was allowed to test his proposed system in Knox County, Tenn. He obtained school roll books and began to extract information. Using college students, and what Sanders describes as "about 200" computers, student test data was logged and correlated with who taught each child.

Sanders wrote his report to the county, and submitted it in September 1982. Knox County apparently wasn't expecting much, if anything, from the research. When Sanders informed them that "I'm through," they asked "With what?"

Not until 1990 did the Tennessee Value Added Research and Assessment Center, and Sanders' method, come to life in Tennessee. By then, Gov. Ned McWherter realized that there had been no improvement in academic achievement in the state, despite the appearance of *A Nation at Risk* and other school reform proposals, since the mid-1980s.

Today, the Tennessee Value Added Research and Assessment Center has the largest collection of longitudinal student data in the country, Sanders said. Tennessee has been able to follow students from second grade through to college. Instead of measuring one group of second-graders in one year, against a different group of second graders another year, the Tennessee system measures the same children's progress from year to year. "By following growth over



Dr. William Sanders speaks on assessment

time, the child serves as his or her own 'control.' This enables the partitioning of school system, school, and teacher effects free of the exogenous factors that influence academic achievement..."

With these individual measurements, researchers get a picture of how much academic growth each child achieves yearly. Sanders' method also associates the teacher with the child. That tells researchers about the "teacher effect," the impact of the teacher on academic growth.

Tennessee value-added system

The Tennessee Value Added Assessment System includes data on the state's comprehensive test, results from annual tests in math, science, social studies, reading, and language arts for third through eighth grades, and end-of course tests for five high school math subjects. The Sanders model is robust enough to allow substitution among variables that have the same characteristics. That means the results are not necessarily sensitive to a change in specific tests used by the school systems.

Analysts collect three years of data before assessment occurs. And the state will not use the TVAAS data alone to evaluate a teacher, school, or school system. Promotion, attendance, and dropout rates are also used in the state's accountability system.

Sanders used a physical growth curve to draw an analogy to his method. If we plot a child's height during the growing years, we will often find that it is not a smooth curve. It is still possible, Sanders said, to find the trend line and possibly make some predictions about the child's future height. Likewise, we could plot a "math growth curve" using annual math test data. The model converts raw scores and grades into a statistically comparable format before looking for trends.

As in physical growth, learning can accelerate, decelerate, or remain flat. Observations in one child alone don't tell us much about a teacher, but a flat line for most children, Sanders said, could be evidence of something going on in that class that year. Racial, socioeconomic, and other factors wash out of the analysis when each child serves as their own 'control.'

According to Sanders, the effectiveness

of the individual classroom teacher is as much as 20 times more significant in a student's annual progress as any of the remaining variables, including class size.

Growth and No Child Left Behind

"The intent of No Child Left Behind is to set an academic floor," Sanders said. But he argues that states and districts have to go beyond NCLB, particularly when it comes to adequate yearly progress. Adequate yearly progress measures average performance of different categories of children. There are serious sanctions if schools fall short under the No Child Left Behind Act. Incentives to avoid sanctions may have unintended consequences, he argues.

One incentive is to focus attention on children who are nearest the adequate yearly progress achievement standard. They are the ones who can "make or break" the school's rating. Sanders predicts that students far below, or well above the standard, won't get the same attention. Academic growth rates will be highest for the almost-proficient children, and lower for low and high-achieving students. Two out of three groups of children won't be achieving at their potential.

Using the techniques developed in their program, Rivers and Sanders can plot projected academic growth rates for different students. "Because you can see what the growth trajectory has to be to get kids to make appropriate progress, you can tell whether they are on a path to make it," Sanders said. Low-performing students will not improve rapidly enough if all they do is meet adequate yearly progress, he said. "The trick is to get the gain rates to where you can create a progression like compounding money. That's the way you ratchet academic achievement to higher and higher levels."

Sanders' studies have found that one year with a poor teacher has a noticeable

effect on a child's academic growth. Two or more years of poor teachers can devastate achievement. There is little evidence of "compensatory effects" from later help. Sanders found that years of service are strongly related to effectiveness. Effectiveness increases in the early years, and typically plateaus at the 22nd

year. After that, there is a lot of variability, he reports. Teachers who leave the profession after one or two years have been the most ineffective teachers, his studies show.

Class size, Sanders said, has an effect only when it approaches the level of private tutoring. Reducing class size by two, or five, Sanders said, is insignificant. Instead, he argues for variable class size, determined by the needs of the students. Low-achieving students benefit most from smaller classes. High-achieving students don't benefit as much, and don't need them.

The general findings of value-added assessment, as seen in Tennessee, are that the teacher is as much as 20 times more significant than any other factor in student achievement growth. Disadvantaged children make as much progress as other children with the same teacher, and schools in poor and minority areas are as effective as other schools.

Sanders knows his views won't be politically popular. "I try to let the data speak," he said, "and I'm telling you what the data say."

Class size...has an effect only when it approaches the level of private tutoring. Reducing class size by two...is insignificant.

Next stop: state laws

School Choice Still Faces Various Hurdles Despite Victory in U.S. Supreme Court Case

By KAREN PALASEK

Assistant Editor

The school-choice decision in *Zelman vs. Simmons-Harris* was the last case decided by the Supreme Court in its 2001-02 term. Writing *Voucher Wars* as a chronicle leading to that decision, Clint Bolick of the Institute for Justice said, "We live in a society characterized by consumer choices — just about everywhere except in the most important service of all, elementary and secondary education." Bolick and IJ played a pivotal role in the preparation and litigation of *Zelman*.

The success of *Zelman* for voucher advocates hinged in large part on the legal concept of "true private choice." Parents needed market-type options, both within and without the public schools, voucher advocates argued. The *Zelman* decision meant that if the court's requirements were met, a state voucher program wouldn't violate the First Amendment Establishment Clause, and was therefore constitutional. Now that the federal question has been answered, has the door to voucher programs in the states been opened?

Not necessarily. Programs still can't give direct aid to religious schools or religious groups. But *Zelman* has defined what is allowed under federal law.

Zelman "clarified the rules for determining what kinds of school-choice programs are constitutional," said Marie Gryphon of the Cato Institute. In

"True Private Choice: A Practical Guide to School Choice After *Zelman v. Simmons-Harris*," Gryphon explains the five criteria necessary to meet the federal benchmark:

"True private choice"

One of the first obstacles that state voucher programs encounter are tuition payments for religious-school education. *Zelman* allows public funding at religious schools, assuming they serve a legitimate secular purpose. In this context, education at a religious school would likely serve both a secular and a religious purpose. If literacy and numeracy are legitimate secular purposes, for example, a Christian school that teaches math and language skills can pass the hurdle. The fact that the school promotes religious values as well would not be a barrier under the law.

According to Ira Lupu and Robert Tuttle in "Zelman's Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles," if government offers aid to all on the same terms, then funds going to a religious school will further a secular purpose. Government-sponsored religious indoctrination isn't an issue under those circumstances.

A second requirement under *Zelman* is that aid to religious schools be indirect. Government cannot promote, or appear to promote, a specific religion. When children attend religious schools under a voucher program, parents, not the school, receive the support. In practice, the state can issue a voucher in the parents' name, but send it to the chosen institution. The parent, exercising private choice, endorses the voucher over to the school in payment. The indirect aid requirement is designed, in part, to prevent the state from limiting the parents' choice of schools.

The direct-indirect distinction did not originate in the *Zelman* case, but *Zelman* finally established its importance. Indirect aid, through parents, is "a necessary ingredient of a program of 'true private choice,'" Gryphon said. No state voucher program will qualify under *Zelman* without meet-

ing this requirement.

A third element of "true private choice" applies to voucher recipients. To avoid the charge that a program attempts to establish a religion, it must apply to a broad clientele. In the language of the court, the voucher program must have "a broad class of beneficiaries."

Programs with narrowly defined beneficiaries raise a constitutional flag. Vouchers for Catholic schools have been ruled unconstitutional because they were exclusive. A program that would fund children from one religious group would be equally unconstitutional.

The "broad beneficiaries" component of true private choice would also prohibit funding that goes exclusively to private schools, religious or not. In *Nyquist* the ruling on vouchers exclusively for private schools was deemed unconstitutional. Even now, *Nyquist* retains some controversial elements for scholars. But at this point, if benefits can be claimed by a diverse group of individuals, the funding program is likely to withstand a challenge. The fact that families that could participate in a program don't

choose to do so, isn't the pivotal issue.

Under the current interpretation of *Nyquist*, programs that want to pass the constitutional test must offer both secular and religious school options.

Opponents of publicly funded vouchers fear that once religious options are included, voucher programs will tilt choice toward the religious schools. But "true private choice" re-

quires structural neutrality in voucher programs. "The choices offered can't be rigged," Gryphon wrote.

If programs are skewed away from the choice of a religious school, they may not run afoul of the Constitution. In *Zelman*, parents in Cleveland were faced with financial incentives to select a nonreligious school under the voucher plan. The program also generated incentives for nonreligious private schools to become public charter schools, a move that would increase the amount of funds they receive.

A voucher program must provide "adequate nonreligious options." In this, Cleveland is an interesting example. Bolick and others argued during the *Zelman* case that public schools should be included in the alternatives available to parents. Otherwise, most of the options available in Cleveland would be religious.

The court accepted nonfailing public schools, in the form of magnet and charter schools, as "reasonable and genuine" alternatives. The viability of nonfailing traditional schools, not considered by the court, remains an open question.

Conclusions

"Whatever the legal issues in a particular school choice lawsuit, our core argument throughout has been that parents, not government, should have the primary responsibility and power to determine where and how their children should be educated," Bolick says of the institute's role.

Because state laws vary in the details of funding restrictions, vouchers won't become a universal feature of the education landscape right away.

Some scholars see antireligious discrimination, and the Free Exercise clause, as a future line of argument for voucher advocates. Others see the tainted history of state restrictions, because of the "Blaine amendments" to state constitutions (see page 8), as a line of challenge.

Whatever the future of vouchers, it is likely to be years before many of the remaining issues are resolved. *cj*



Bolick speaks at pro-voucher rally at the U.S. Supreme Court.

Parents... should have the primary responsibility and power to determine where and how their children should be educated.

CSF-Charlotte Goes Independent in July

New York financier Ted Forstmann of Forstmann-Little, Inc., and John Walton, founder of Wal-Mart, started the Children's Scholarship Fund in 1998. These businessmen contributed \$100 million to start a scholarship fund for children whose families wanted them to attend tuition-based schools they could not afford. In 1999, Salisbury native Julian Robertson, Founder of Tiger Management, contributed \$1.5 million to start Children's Scholarship Fund-Charlotte. The New York Scholarship Fund matched Robertson's funds, and a total of \$3 million was made available for children in the Charlotte area. Although money existed for scholarships, a nonprofit organization that was willing to administer the funds was needed. The John Locke Foundation saw the potential, answered the call, and provided operational support for four years.



Lindalyn Kakadelis

In July, Children's Scholarship Fund-Charlotte will become its own nonprofit. Under a vibrant board of directors, scholarships will be administered through a community foundation, the Foundation for the Carolinas. Robertson gave an additional \$2.5 million in 2002, and the Walton Foundation continues to match contributions for extending and awarding new scholarships. The charity has a bright future and will continue to help low-income families provide educational options for their children.

While more than 400 students receive support for a four-year scholarship term, there is a problem. Not enough money is available to assist the 1,900 families that have requested support. The organization limits names collected, and turns away families calling from other counties pleading for help. *Carolina Journal* has published stories about families, obstacles faced by students, and success stories coming from scholarships. If you missed these highlights, go to www.csfcharlotte.org.

Private-sector support for K-12 education is a win-win for everyone. One size does not fit all — and one type of schooling does not fit the needs of all children. Competition improves education for all, and when schools compete, students win. If you desire something for your child other than government-funded schools, you must pay twice. Once through your taxes, and then again to pay tuition. Even to simply cross a county line, the family must pay the county supplement.

The education establishment has done a remarkable job of miseducating the public and making elected officials indebted to campaign contributions. Considering that we already have vouchers for low-income families using preschools, and tax-funded assistance for higher education, only K-12 grades are held in a sacred monopoly. Florida, Arizona, and Pennsylvania allow specific tax credits for donations to aid low-income families with tuition. Other states offer vouchers. North Carolina offers NOTHING to support these families.

In August 2000, after only one year of the program, research on the achievement of scholarship students was conducted. The findings demonstrated large and immediate gains in reading and math, similar to those found in other choice programs.

The N.C. Education Alliance will continue to inform North Carolina citizens that school choice is happening around our country. I bring a big thank you to the John Locke Foundation and their supporters from hundreds of families that were given opportunities to choose schools. Children's Scholarship Fund-Charlotte is launching! While I will miss working with the families and students, I am delighted to continue directing the North Carolina Education Alliance and promoting education choice.

Kakadelis is director of the N.C. Education Alliance

School News: Nation

• American textbooks have become subject to increasingly politically correct editing, reports the *New York Times* about Diane Ravitch's new book. *The Language Police: How Pressure Groups Restrict What Students Learn* describes how, as pressure groups "have clamped down on the education system, more and more subjects, words and ideas have become taboo."

The forbidden topics include mention of rodents generally, including Mickey Mouse and Stuart Little; mothers or fathers in any situation that might be considered stereotypical, such as a mom cooking dinner; and any identifiable regional setting, because of possible "regional bias." Recommendations also include dropping mention of "junk" foods in favor of "health" foods. Ravitch is an education historian, and argues that this type of censorship has gradually gutted the teaching of literature and history over the last 30 years.

• The superintendent of the Washington Township, Ind. schools has a problem and a solution, according to the *Boston Globe*. Superintendent Eugene White called a convocation of his black male high school students last fall, and confronted them with the fact that nationally, black males lag behind other high school students.

White told the boys that they spent too much time on clothes, partying, and jobs, and not enough on their education.

Only 43 percent of black male students passed math and reading as sophomores in the district in 2001, compared to 88 percent of white male students. The state average for black males in Indiana is an even-lower 33 percent on both tests.

White offered extra tutoring, study assistance, and help with Advanced Placement classes, which he insists the students need to push themselves to take. He also emphasized the importance of parental support. "I think parents drop out of school before kids drop out of school," he said. He calls meetings with groups of parents, and holds them even if only about 20 show up.

White's tactics have met with some resistance from students, especially for singling out one group for criticism. "I don't like you segregating us like this. I think you should have something like this after school," one student said of the in-school convocation.

"You're in school. I run this school, and I meet with you when I want to," White replied. White, who is black, is seeing returns on his challenge to the students. In 2002, 55 percent of black males passed the language test, and 60 percent passed the math test.

• The *New York Times* reports major changes in the Individuals with Disabilities Education Act, which will affect 6.6 million children. Earlier intervention, a reduction in paper work, and legal assistance to states are included in the new legislation, gathering bipartisan congressional support. CJ

UNC symposium focuses on separation of church and state

State 'Blaine' Laws: Bigotry or Philosophy?

By KAREN PALASEK

Assistant Editor

RALEIGH

In 1875, a proposed 16th amendment to the U.S. Constitution would have prohibited public school lands or tax funds from being "divided between religious sects or denominations." The amendment was introduced by James Blaine, then-speaker of the U.S. House. Not one of the three versions eventually offered achieved the supermajority needed for passage, so Blaine's bill died at the federal level.

Blaine's legacy continues today, however, in the form of "baby Blaines," Blaine-type provisions enacted into 37 state-level constitutions. State-level baby Blaines are often more restrictive than the proposed amendment that inspired them. The *Zelman vs. Simmons-Harris* Supreme Court decision clarified issues surrounding public vouchers for religious schools, but state-level questions remain.

At a recent UNC Law School symposium sponsored by the *First Amendment Law Review*, and the Pew Foundation Forum on Religion and Public Life, legal and education scholars convened to discuss the history and significance of the failed amendment that bears Blaine's name.

Zelman clears the Supreme Court

The Supreme Court's 2002 decision, in *Zelman vs. Simmons-Harris*, allowed parents in the monumentally failing Cleveland school district to use publicly funded vouchers for payment of school tuition. Parents were allowed to choose religious schools if they wished, or to elect private or non-failing public schools.

The court ruled in *Zelman* that the Cleveland program was "neutral toward religion" under the law, that parents were exercising true private choice, and that viable secular options existed. Under these conditions, publicly funded vouchers do not violate the Establishment Clause of the First Amendment to the U.S. Constitution. But because of state Blaine laws, *Zelman* did not universally clear the way for vouchers.

Anti-Catholic or anti-religion?

Bible reading was a long-standing practice in America's "common schools" during the 19th century. A Protestant education was the accepted common denominator among students, and "a means of establishing a national culture," said Dr. Ward McAfee, professor of History at California State University-San Bernardino. "The King James version of the Bible was assumed to be non-sectarian," McAfee explained in a background presentation on Blaine and his proposed amendment. Catholic beliefs were considered both suspect and sectarian in the Protestant atmosphere of 18th and 19th century American public education.

In 1789, less than 1 percent of the U.S. population was Catholic. By 1840, Catholics still accounted for less than 3 percent of the population. But increasing numbers of Catholics, mostly Irish, raised anti-Catho-



Thomas Nast cartoon depicting Roman Pope preying on American schoolchildren

lic sentiment and galvanized sanctions against Catholic influence, and even presence, in schools and in the workplace.

According to Kevin "Seamus" Hasson, president of the Becket Fund for Religious Liberty, the Congregational Church was established as the official church of Massachusetts during the 1830s. The King James Bible officially became required reading. Immigrants were precluded from holding office or from voting. The "Know-Nothing" party that controlled Massachusetts politics

in the 1850s was, Hasson said, "anti-Catholic, anti-immigrant, and anti-Negro." Anti-Catholic fervor was particularly keen, and led to "searches in nunneries for hidden dungeons, and removal of Latin inscriptions above the doorways of state offices," Hasson said.

Hasson argued that the legal restrictions facing Catholics, blacks, and immigrants in Massachusetts predated Blaine's amendment, and reflected

"pure bigotry."

Although fewer than 3 percent of Massachusetts residents were Catholic, the state strengthened its anti-immigrant laws during its 1917-18 constitutional convention. The convention adopted a rule preventing a citizen ballot from changing Massachusetts' Blaine provisions, and a further rule prohibiting a citizen's ballot from amending the "no change" rule. According to Hasson, these rules are currently being challenged in the courts.

Bigotry wasn't confined to Massachusetts. The American Protective Association was formed by Henry F. Bowers in Iowa in 1887. Its membership oath said, "I will use my utmost power to strike the shackles and chains of blind obedience to the Roman Catholic church," and, "I will use my influence to promote the interest of all Protestants everywhere in the world..."

New York-based *Harper's Weekly* magazine published political cartoons that reflected popular anti-Catholic sentiment.

One cartoon by Thomas Nast depicts what appear to be alligators, advancing on helpless children along the banks of a river. The predators have Pope's mitres for jaws, and the reptiles are actually Catholic clerics, preying on frightened, and presumably Protestant, children. A lone (Protestant?) defender stands between the terrified innocents and a Catholic onslaught.

Blaine's continuing impact

Why does it matter today whether Blaine intended to prevent specific groups from receiving public monies for religious education? Or whether he took an explicitly anti-Catholic, or pro-Protestant view? Because *intent* may matter, according to the courts.

Hasson points out that in *Hunter vs. Underwood*, the Supreme Court ruled an Alabama state constitution invalid. It contained a provision that was originally targeted at blacks, even though the law was later applied equally to all. Alabama's constitution suspended the voting rights of a person convicted of a crime of "extreme immorality or wickedness." The plaintiff successfully argued that the intent of the law was to disenfranchise blacks. The court concurred, and declared the state constitution invalid. Hasson argues that all state Blaine laws are unconstitutional for reasons of targeted intent.

Professor Steven Green, of Willamette College of Law, argued that nonfunding principles precede anti-Catholic sentiment, and may reflect an underlying moral philosophy instead.

Green noted that James Madison, in *Memorial and Remonstrance*, warned that publicly funded religious activity differs from tyranny "only in degree."

Madison was responding to an attempt to use taxes to support houses of worship in Virginia. Madison's moral philosophy led him to argue that state funding of any religion was a violation of everyone's religious liberty. According to Green, the Blaine Amendment simply "acted as a fulcrum for Protestant exercises in public schools, and a host of other things."

Scholars see post-*Zelman* issues surrounding vouchers focused more and more on unresolved state restrictions. They also see the possibility of a return to the Supreme Court, to adjudicate remaining disputes. CJ

State level "baby Blaines" are often more restrictive than the proposed amendment that inspired them...

Nation's report card shows scores drop with increase in participation rates

Student Exclusions May Affect Integrity Of National Assessment

By KAREN PALASEK
Assistant Editor

As North Carolina heads into the compliance phase of the No Child Left Behind education law, accountability experts must decide which students can legitimately be excluded from testing. Under the 2001 law, all students in grades four and eight will be required to participate in the National Assessment of Educational Progress in math and reading. NAEP is required to conduct the assessments at least once every two years under the law.

Before the No Child Left Behind law, state participation in NAEP was entirely voluntary. The National Assessment Governing Board, which determines policy for the NAEP, may offer tests in additional subjects and additional grades "to the extent that time and money allow." What concerns the Governing Board is the effect that testing exclusions, or large changes in testing exclusions, have on the integrity of the NAEP's results.

Exclusions and reporting

NAEP uses a sample of 2,500 students in each state to generate its measurements. NAEP is designed to provide information about the general level of skills and knowledge of students, and no student takes the entire test. All NAEP test questions, data, and assessment instruments are available for public inspection in a secure setting.

State education officials know that test scores, particularly in reading, tend to rise with testing exclusions. In an interview with *Education Week*, Darvin M. Winnick, chairman of the National Assessment Governing Board, noted the potential for gaming the results with student exclusions. "This is a longtime discussion," he said. "Do you help your scores by excluding certain kids? It's as simple as that."

The National Center for Education Statistics manages NAEP for the U.S. Department of Education. At the NAEP's board meeting with NCES, project officer Arnold Goldstein noted recent dramatic movements in NAEP participation rates. From 1998 to 2002, according to Goldstein, some states had increases of as much as 7 percent in exclusion rates. Other states dropped exclusions by up to 9 percent, Goldstein said. He also said "exclusion rates are correlated with increases in NAEP read-

ing scores at the state level."

While NAGB has the authority to deal with questions surrounding the NAEP, so far they have not set a specific cutoff for exclusion rates. The history of NAGB has been to focus on inclusion rates instead. According to the National Center for Educational Statistics, the intent of NAEP has been to include as many special-needs students as possible. Expectations under the federal law are that 95 percent of all students, regardless of disability status, be assessed by some means.

Testing accommodations

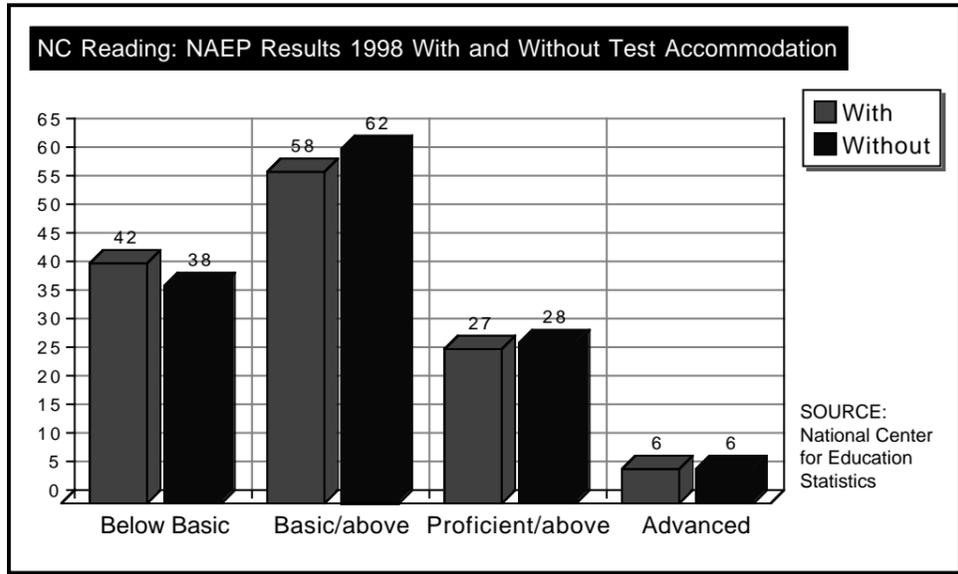
Special-needs students were not generally offered testing accommodations on NAEP assessments before 1998. NAEP assessed 31,398 public and nonpublic-school students in grades four, eight, and 12 for the 1998 NAEP reading report card. Of the 12th-grade students, 7 percent were classified as SD and/or LEP — students with disabilities or limited English proficiency. Twelve percent of eighth-graders and 16 percent of fourth-graders were SD, LEP, or both. About half of each group of SD/LEP students were excluded because they could not "participate meaningfully in the assessment."

The guidelines for exclusion were identical in 1992 and 1994. Students with disabilities who were mainstreamed for less than 50 percent of school time, or judged incapable of meaningful participation, were exempt. Children who had spent less than two years in an English-speaking school, and could not participate meaningfully in English, were also excluded.

Under the new criteria, less than three years of English instruction, or an inability to participate in English, will remove a student from the testing pool. The revised criteria also will disqualify a student with an individual education plan that prohibits the NAEP test format, and a student with severely low cognitive function.

Field tests with the new criteria began with the 1995 NAEP reading test. Test accommodations were offered, on an experimental basis, in 1996. A split-sample design for the 1998 NAEP reading assessment gave the first statistical measures of how changes

...volatility in participation rates, seen in the 2002 NAEP assessments, signal the depth of the dilemma states are facing.



Percentage of N.C. fourth-grade students in NAEP reading proficiency groups

in special needs participation, and test accommodations, would play out.

According to NCES, "For the 1998 NAEP reading assessment, national and state NAEP school random samples were divided into two equivalent halves." One-half of the sample took the test without any accommodations. Special-needs students in the other half-sample got extended time, one-on-one testing, or other provisions typically allowed in the schools. Translating dictionaries were prohibited. Questions and reading passages could not be read aloud.

The first 1998 NAEP report used data from student samples without any accommodation. In North Carolina, 38 percent of fourth-grade students were below basic in reading, 34 percent were at the basic level, 22 percent were proficient, and 6 percent were advanced, the report said. A 'basic' level means the student understands overall meaning, but may not be able to draw inferences, and cannot generalize to concepts outside the text.

The revised NCES report, *Including Special-Needs Students in the NAEP 1998 Reading Assessment*, showed that the modified assessment framework tended to reduce exclusions. Students who used accommodations made up 1 percent to 2 percent of the total number for each grade. By drawing in more low-performing students, the NAEP

had succeeded in making the test accessible to a wider population. Average reading scores on the more-inclusive NAEP declined by one scale point in each grade. Accomplishing one goal raised new issues.

North Carolina's fourth-grade reading results declined significantly using the revised procedures. Forty-two percent of students scored below basic, 31 percent demonstrated basic skills, and 21 percent were proficient. The percentage of advanced students was unchanged. Eighth- and 12th-grade scores also declined, but were not statistically significant.

States, and the NAGB, understand the implications of new NAEP procedures. The need to meet proficiency standards under No Child Left Behind law drives exclusions up. Because of the mandate to test all students, and the availability of a wider choice of options, low-performing students can now be included. The revised scores are probably a "truer picture," NCES said. But recent volatility in participation rates, seen in the 2002 NAEP assessments, signal the depth of the dilemma that states are facing. The National Assessment Governing Board has already reversed itself several times on a policy to 'flag' results when exclusion rates vary by more than 3 percent. No "precise point at which exclusion rates would have a significant impact on average test scores" has been determined, Goldstein said. Nevertheless, NAGB may reinstate the 'flagging' policy until it can determine whether some states are using exclusion rates to unfairly influence test scores. □



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Bats in the Belltower*Discrimination by the chaste*

There's an old joke about editorial biases in major newspapers that proceeds thus: The Lord, in a vengeful fit, decides he is going to destroy the world but wants to give mankind some kind of warning. He contacts the editorial boards of *The Wall Street Journal*, *The Washington Post*, and *The New York Times* and tells each that he plans to destroy the world at noon the coming Friday.

The next day *The Wall Street Journal* announces: "World to End Friday; Markets to Close Early." *The Washington Post* states: "World Ends Friday; Federal Workers Face Unemployment." *The New York Times* intones: "World to End Friday; Women, Minorities Hardest Hit."

Meanwhile, on the greater comedic stage of reality, Duke University Divinity School called for chastity, and homosexuals were hardest hit.

As the *Duke Chronicle* reported April 9, Divinity officials approved a "conduct covenant... intended to forge a bond among students, faculty and staff that ensures adherence to the school's Christian roots." A staff editorial explains "[w]here the covenant goes wrong": it "appeals to students to pursue, among other things, [scare quotes alert] 'chastity,' 'justice,' and 'mercy.'"

Truly one can only exclaim Kurtz-like at the horror of such an appeal. And even though it was probably not necessary at that point for the *Chronicle* staff to flesh out its objections, it did so anyway. "Quite simply, the code leaves open the possibility of punishing a community member for committing homosexual acts or not being faithful to his or her spouse, and this is unacceptable — both morally and practically — for a serious academic institution." (Note: Concerning the latter point, neither coed-kissing Coach Eustachy of Iowa State University had been compelled to resign nor stripper patron Coach Price of the University of Alabama had been fired at the time of the editorial's writing.)

Nevertheless, "it gets worse," the *Chronicle* warns. "It is not difficult to imagine such a system being used to justify the harassment of others, particularly gays and lesbians."

That's a point picked up by a *Chronicle* letter-writer the same day. Divinity School student Rydell Harrison writes under the heading "Divinity School not welcoming for homosexuals" that "[b]y using the language of chastity without further clarification, our administration has unofficially taken a stance on LGBT [for 'lesbian, gay, bisexual, and transsexual'] students."

Harrison buttresses his concern by noting a statement made by the Rev. Eugene Rivers III preaching at York Chapel that was "incredibly offensive to gay and lesbian students" (but not the Bs & Ts?) which was "The Bible says Adam and Eve, not Adam and Steve." Harrison found "most startling" that none of the faculty or students in attendance spoke out in opposition nor was any "formal apology to gay and lesbian students or allies" made.

A search on BibleGateway.com, "a free service for reading and researching scripture online," yielded no results for "Steve." CJ

UNC schools received \$123.6 million in 2001-'02

UNC's Federal 'Overhead' Grant Money Left Untouched — At Least for the Moment

By JON SANDERS

Assistant Editor

RALEIGH

Last year, 15 universities comprising the University of North Carolina system (excluding the N.C. School of the Arts) received \$123.6 million in "overhead receipts" from federal research grants. That money, which the UNC system prefers to call "facilities and administrative receipts," is money given on top of the actual grant amount that is intended to defray the administrative and institutional costs in conducting the actual research.

Those are costs, however, that the General Assembly has already covered. Thus the overhead receipts stand out as a recoverable pot of money to legislators, especially during a tight budget season.

Not so fast, say university lobbyists. They paint a picture of future irrelevance of the UNC system if they are forced to give back some of their overhead. That money is the catalyst for future research projects, they say, and equate the legislature thinking of taking it with a farmer considering eating his seed corn.

A 'close call'

So far the UNC argument has held sway in Raleigh, although it suffered a close call in March, when a last-second change to Gov. Mike Easley's budget changed a plan to pull \$13.9 million in the universities' overhead receipts to a proposal to cut that amount via a "onetime flexibility reduction," which left it at the chancellors' discretion where to make the cuts.

Last year when legislators mulled the option of accessing part of the universities' overhead, UNC advocates brought forth a litany of those "good uses," such as: N.C. State's recruitment of Ralph Dean, an expert in fungal genomics, who since 1999 has garnered more than \$11 million in research grants; East Carolina University's acquisition of the Da Vinci Surgical System, robotic technology that has enabled ECU surgeons to perform the world's first adrenal gland removal surgery, and the nation's first gastric reflux repair; UNC-CH's recruitment of Charles Perou, a researcher developing new technology in the fight against breast cancer; the further development N.C. State's Centennial Campus, thus driving employment and spin-off beneficial research discoveries; and support of start-up costs for new laboratories and funding for new research areas.

N.C. State Chancellor Marye Anne Fox and UNC-Chapel Hill Chancellor James Moeser co-wrote an op-ed in the July 2, 2002 issue of *The Charlotte Observer* in which they warned of devastating results if the legislature took some of the receipts — and not just to the universities, but also to the state.

"If overhead receipts were diverted from our campuses," Fox and Moeser write, "North Carolina would lose ground — and perhaps new companies, new jobs, and our best faculty — to other states that can make investments that promote research."

On the other hand, they argued, allowing the universities to keep those funds would have beneficial effects. "Preserving our overhead funds for their intended pur-

UNC Institution	2001-02 Receipts	Percent of total
Appalachian State University	\$ 446,051	0.4%
East Carolina University	2,601,317	2.1%
Elizabeth City State University	265,503	0.2%
Fayetteville State University	308,756	0.2%
North Carolina A&T State University	2,778,095	2.2%
North Carolina Central University	725,103	0.6%
North Carolina State University	24,307,963	19.7%
UNC Asheville	118,960	0.1%
UNC-Chapel Hill	83,719,986	67.7%
UNC Charlotte	1,614,674	1.3%
UNC Greensboro	3,634,306	2.9%
UNC Pembroke	219,789	0.2%
UNC Wilmington	2,064,000	1.7%
Western Carolina University	296,565	0.2%
Winston-Salem State University	336,906	0.3%
UNC-General Administration	175,574	0.1%
TOTAL	\$123,613,548	

Source: The 2001-02 *University of North Carolina Report on Overhead Receipts*, presented by the Board of Governors of The University of North Carolina to the North Carolina General Assembly Joint Legislative Education Oversight Committee, Feb. 14, 2003.

pose — research — ultimately will help North Carolina recover its economic momentum and stability."

UNC institutions weren't allowed to keep all of their overhead receipts until 1999. Until then the legislature expected a certain share of it back into state coffers. In 1990, the state kept 30 percent of UNC schools' overhead. In 1991 the legislature kept 50 percent, with the promise (which was kept) that the next year it would keep only 20 percent. By 1997 the legislature kept only 10 percent,

and was, also as promised, phasing out its demanded share of the overhead.

The UNC gorilla

The 800-pound gorilla in this issue, however, has always been UNC-CH. In 1989-90, for example, UNC-CH brought in \$31.9 million of the system's \$45.3 million. In 2001-02, UNC-CH alone earned more than two-thirds of the overhead (\$83.7 million) of the entire UNC system. That amount dwarfs N.C. State's haul of \$24.3 million, even though N.C. State earned more than 60 percent of the remaining overhead (\$39.9 million).

So if the legislature were to return to taking a portion of that overhead, it would receive a far greater amount from UNC-CH than any other school in the system. N.C. State would contribute a significantly smaller share than its sister flagship, but it would also give up an amount considerably higher than those contributed by the remaining UNC schools.

The UNC system is scheduled to receive an additional \$24 million in the House budget or \$25 million in the Senate from tuition increases. Nevertheless, if the legislature had gone by the governor's original

plan to pull \$13.9 million from overhead receipts rather than from the universities' budgets, the disproportionate effect of the loss of overhead revenue to UNC-CH would likely have offset the positive revenue effect of the tuition increase. That effect would just as likely not be shared by the other UNC institutions, including possibly also N.C. State.

Apart from the matter of universities receiving "double payment" for their facilities and administration (owing to federal overhead receipts going to cover those things, which have already been funded by the legislature), there is also the issue of where those receipts go. Such funds have been abused by private as well as public institutions, including recently.

A famous example from the late 1980s is the \$1,200 commode that Stanford University put in its president's house, paid for by federal research overhead. In 1991 auditors for the U.S. Department of Health and Human Services questioned more than \$900,000 in overhead expenses listed by Duke University, which included \$6,000 for wine.

Recent, questionable expenditures by UNC schools include Winston-Salem State University spending more than \$75,000 to search for a new chancellor, UNC-CH diverting grant money supposed to reimburse its libraries to other areas, and UNC-CH spending about \$3,000 of its overhead on gourmet pizza.

The latter prompted former Rep. Art Pope last year to start the "Amante Pizza Index" to chart wasteful spending of overhead receipts according to how much federal money is dumped on UNC-CH's gourmet pizza vendor of choice.

In lieu of recovering a portion of universities' overhead receipts, the legislature began requiring UNC officials to issue annual reports to the legislature on overhead receipts. Nevertheless, the issue is not likely to be settled soon, especially if the state's budget crunch persists. CJ

Winston-Salem State spent over \$75,000 in overhead receipts for a chancellor search. UNC-CH spent \$3,000 for gourmet pizza.

Online Sports Medium Sues NCSU, UNC For the Same Access as 'Official' Media

By SUMMER HOOD

Contributing Editor

The latest court case brought about by the North Carolina Chapter of the Institute for Justice involves two cherished traditions in the state, freedom and sports. It also concerns a rapidly evolving form of journalism, online news media.

The plaintiff is Jerry Cornwell, founder of the StruttingWolf.com (TSW) website, an online medium focusing on North Carolina State University and Atlantic Coast Conference athletic news and events. After merging with a similar site, Statefans.com, the three-year old TSW is now the largest NCSU site on the Internet. "Thousands of people check our site to follow Wolfpack sports," Cornwell said.

Despite TSW's audience, the site faces a significant roadblock to providing coverage of NCSU athletics: the university itself.

TSW's suit names NCSU and its athletics archrival, the University of North Carolina at Chapel Hill as defendants in the case. Others are the Board of Directors of UNC-CH, Annabelle Vaughan, assistant athletic director for media relations for N.C. State, and Steve Kirschner, associate athletic director for athletic communications for UNC-CH.

According to case, Vaughan and Kirschner have refused to grant media credentials to Cornwell because TSW is only an "online" media entity. Other online media, such as GoPack.com and CarolinaBlues.com, enjoy such credentials only because they are "official" school websites.

While TSW is denied access, Cornwell said, *Inside Carolina*, a print and media publication that focuses on UNC-CH is credentialed by N.C. State. "Here's a print and online publication that serves our biggest rival, while our site, which does nothing but promote N.C. sports, is turned down just because we are online and not 'official,'" Cornwell said. "That makes no sense."

The denial of such credentials means more than "losing the best seats in the house," according to IJ-NC's May seventh press release. It includes the lack of accessibility to coaches and players and being deprived of up-to-the minute statistical analysis. IJ explains that this all means "obtaining information second hand or after the fact," thereby, "excluding the most loyal and enthusiastic media."

Two great bulwarks of liberty

Heather Royster, staff attorney for the IJ-NC, which is a nonpartisan, nonprofit public interest law firm, explained that the N.C. Constitution in Article 1, Section 1, "guarantees our citizens a fundamental right to 'the fruits of their

own labor.' Simply put, the state cannot interfere with one's right to earn a living in an ordinary and harmless occupation without a substantial and solid reason."

N.C. State and UNC-CH's exclusion of TSW, however, appears neither substantial nor solid. Royster said it is "based on the status of the medium or, in the case of UNC, based on the medium's point of view."

According to IJ-NC, this section of the state constitution "is a strong and enforceable protection for North Carolinians' economic liberty and means that public entities — like the UNC system — can't restrict that liberty." IJ-NC argues that the actions of NCSU in denying credentials to TSW place the site "at a serious competitive disadvantage compared to [its] credentialed counterparts."

In addition, IJ-NC's suit claims that the restrictions on TSW are a violation of another state constitutional provision. Section 14 of Article 1 in the state's Declaration of Rights protects freedom of speech and the press. It calls these freedoms "two of the great bulwarks of liberty and therefore shall never be restrained."

IJ-NC further explains that the violation is not just at the state level; the rights of the press are protected under the U.S. Constitution as well. As stated in the IJ-NC press release, "The drafters of each constitution knew the importance of an unfettered press to open government... and surely the courts will recognize that in the Internet age online media are as important a part of that 'bulwark of liberty' as any other form."

According to IJ-NC, there is a legal precedent for TSW's case. In the 1986 trial of *Anderson v. Cryovac, Inc.*, the First Circuit Court of Appeals addressed the restriction of access to information to certain types of media. Specifically, in the court's legal opinion: "The danger in granting favorable treatment to certain types of media is obvious: It allows the government to influence the types of substantive media coverage that public events will receive. Such a practice is unquestionably at odds with the First Amendment. Neither the courts nor any other branch of the government can be allowed to affect the content or tenor of the news by choreographing which news organizations have access to relevant information."

For Cornwell, the case is also about common sense. "It's amazing that, in 2003, our two flagship public universities would refuse to credential one form of media over another, with the one they leave in the cold being the fastest and best way to give information about sporting events," he said.

Of "UNC's restriction on 'opposing' media," Cornwell said it "is more reminiscent of King George III and North Carolina's Speaker Ban law than of the ideals of a state university founded in 1789, the year our Federal Constitution was adopted."

Of "UNC's restriction on 'opposing' media," Cornwell said it "is more reminiscent of King George III and North Carolina's Speaker Ban law than of the ideals of a state university founded in 1789, the year our Federal Constitution was adopted." *CJ*

UNCW Observes Ludacris Standard

This past semester several items were removed, as soon they appeared, from the student union at the University of North Carolina at Wilmington. Among them: antiwar flyers labeling President George Bush a "bully," depicting Lady Liberty impaling a dove by its rectum on a sword, and having the U.S. flag being produced in the exhaust fumes of B-1 bombers; magazines containing a photograph of men engaging in anal sex; a large sign advertising "The Vagina Monologues" calling for all [offensive slang for vaginas] to "Unite!"; and flyers in support of the war in Iraq.

Actually, only the last one was removed. The rest were allowed to stand.

Also deemed too offensive for UNCW this year was the song "Cotton Eye Joe" as performed by the group Rednex. The song used to be on the play list for UNCW basketball games, but it was pulled in February when a trustee complained. The nature of its offense is not the Rednex version, however, but rather its roots as an old minstrel tune. As the trustee, Linda Upperman Smith, explained to the *Wilmington Morning Star*, "There are some very derogatory lyrics in the oldest version of the song that make reference to the ownership of a black man."

Not too offensive for UNCW, however, were the profanity-dependent lyrics of rapper Ludacris, who once sang that he hates it "when it's too many n——, not enough hoes." UNCW shelled out \$120,000 (half through ticket sales, but the other half through student fees) to bring him for a concert March 29.

What's behind this bizarre, apparently double-natured standard for offensiveness? How is it that pro-war flyers, which if nothing else reflected the sentiments of a large majority of North Carolinians and Americans, and a sanitized song with admittedly shady roots were treated as more offensive than a photograph of anal sex, references to women as slang for their vaginas, descriptions of women as b—es or "hoes" and boasts of violence to them, and desecrations of American symbols? If censorship had to be used, and if the basis for that censorship was that some would be offended by the speech in question, as it was here, then why were only the former censored and not the latter?

Do those items that escaped censorship have anything in common? In fact, they do. They are all items of interest to the "protected" groups on campus: homosexuals, feminists, black activists (who politicize rap and hip-hop as forms of political dissent), and leftists in general.

What does that have to do with anything? Well, UNCW is very, very serious about ensuring "diversity" on campus. UNCW has a "Chancellor's Task Force for Diversity" tasked with "improving overall campus diversity" that on April 15 released its final report of recommendations (available online at www.uncw.edu/dpscs/diversitytaskforce).

Naturally the task force was told to place "special emphasis on racial/ethnic diversity." That's well in keeping with their peers across academe, where diversity is only skin deep and intellectual diversity is dangerous and probably offensive to somebody who's "diverse."

The campus idea of diversity generally resembles a bag of Peanut M&M's™: different colors on the outside, same nutty interior.

Perhaps that's why UNCW students had to pay to give Ludacris a forum on campus, but students who voluntarily devised, photocopied (at their own expense) and posted pro-war posters on campus found out the next day that they had no forum after all. *CJ*



Jon Sanders

Course of the Month



Here's a bit of non-history that clearly proves to any worth-his-salt Duke Literature student that Stalin brought hope, not horror. And they call it "propaganda." Pah!

Duke Literature Course Details 'Hope' Awakened by Stalinism

This month CM traipses back to the Duke University Literature Department, that wellspring of the weird, to honor another gem. This one came to our attention by way of the February 2003 issue of *New Sense* magazine, published by those mettlesome conservative students. (There's something about the phrase "disastrous attempt to whitewash Stalinist Communism" that just arrests our attention.)

LIT 60S.04: COLLECTIVE AND COLLECTIVIZATION: BETWEEN COLLECTIVIZATION OF AGRICULTURE

We will cross literary and historical texts, as accounts and as practices: beginning in Soviet 1930s, the collectivization of agriculture. Reading literature as history and history as literature, and reading novels alongside and against diaries, we will ask: Do collective property, production and work announce the arrival of collective political power? Or was a collective, as much as an individual, possibility taken and made into nothing? What is a "socialist" episode in the "global war against peasantry"? Some other projects of collectivity may show us if, and how, do the Soviet thirties speak to our own hopes.

You saw that, too, didn't you? [I]f, and how, do the Soviet thirties speak to our own hopes? The only way we could conceive of that era speaking to hopes is if what it spoke was LASCIA TE OGNE SPERANZA, VOI CH'INTRATE (Abandon All Hope, Ye Who Enter Here) — with full Dantean malice. Criminy.

Or how about this: "Do collective property, production and work announce the arrival of collective political power?" Well, did they? (Hint: does Marx say "Laissez-nous faire"?)

The course is taught by a graduate student, Simon Krysl. According to *New Sense*, Krysl at least grants the existence of horror in the Soviet regime at the time, but he weighs it on equal scale with all that "hope" it brought: "Collectiviza-

tion' of agriculture in the Soviet 1930's has awakened much hope as well as much horror."

The grad-student instructor is also quite suspicious of historical accounts, probably because of their alarming (to Krysl) lack of cataloging all the hope brought about by the Soviets. (Did they look under that pile of bodies? What about those hollow-eyed corpses; bet they didn't check beneath them!) *New Sense* reports that Krysl's advertised course readings are "various pieces of Communist agitprop and radical theory." This would be, one supposes, what he means by "Reading literature as history and history as literature." *New Sense* asks, "why not read the history as history? Because it is too painful for a Marxist ideologue like Mr. Krysl?"

Despite inferring oodles of hope in what untrustworthy History refers to "The Great Purge" (partly to underscore the tremendous amount of humanity slaughtered, and partly to differentiate it from the other Soviet purges), Krysl does sound, if not hopeless, at least resigned in one part of his advertisement. "If we cannot build a future on the hopes of 1929 any longer, why is this so?" Ooh! Ooh! We know! It's because of the slaughter of tens of millions, right? That and the concomitant terrorizing of the entire populace? And all the starvation and the commission of other atrocities? Are we close?

We see no need to improve on how *New Sense* summed up the class. "Mr. Krysl's Communist navel-gazing on the horrors of Stalinism is not just pathetic; it is immoral," they wrote. "How can anyone treat the forced starvation of countless souls as the plaything of his own fashionable radicalism? Imagine if anyone dared to treat the Holocaust as the object of such disgraceful lucubrations. There would be an outcry against this horrendous disgrace-and rightly so." CJ

Cheating, Ethical Violations Rampant, Director of Duke Ethics Center Says

By JENNA ASHLEY
Editorial Intern

RALEIGH

Unethical behavior is rampant on college campuses and in society today, the director of the Kenan Institute for Ethics at Duke University said at a luncheon sponsored by the John Locke Foundation on April 28.

"The pressures and opportunities for dishonesty have increased in many arenas," the director, Dr. Elizabeth Kiss, said.

A survey of college-bound seniors in 1998 revealed that many young people do not perceive cheating as a serious ethical problem, Kiss said. For example, many of them have taken part in unauthorized collaboration on school projects, copied information without proper citations, or falsified laboratory results.

Similarly, one-third of employees reportedly observe misconduct at work, such as lying, withholding of information, using intimidation, and misusing company money, Kiss said.

Corporate and academic scandals, linked to crises in core institutions such as the church, government, and professions, can create a cynicism about society, Kiss said. Cynicism allows people to discredit ethics altogether by believing that "all students cheat, all politicians are corrupt, and all businesspeople lie," Kiss said.

In order to resolve the problem, "we must transform our organizational cultures to pay attention to the implicit and explicit ways in which businesses and schools com-

municate their organizational values; we must make ethics an integral part of our culture," Kiss said.

In response to the crisis, students on campuses across the United States have introduced honor codes and have opened dialogue about ethics in school and in the community, Kiss said. The Kenan Institute and other similar organizations also have begun programs to promote ethical behavior on campuses and in businesses nationwide, Kiss said.

The institute joined with the Center for Academic Integrity to create a program that promotes a "community of integrity," Kiss said. Honesty, trust, fairness, respect, and responsibility are the core values of integrity. Academic integrity is the foundation for a vibrant community of teaching, learning, and scholarship, she said.

In order to promote these values, educators must talk about them, measure themselves by them, create opportunities for students to practice them, model their behavior after them, and help students navigate by them, Kiss said.

Kiss said the Kenan Institute tries to raise awareness of the importance of ethics in schools, businesses, and the community. The institute gives awards to schoolteachers who teach ethics and character education in innovative ways, collaborates with young adults in a forum about ethics in society, has created an eight-step program to create an ethical culture in businesses, and with the Center for Academic Integrity promotes ethics on campus. CJ

CAROLINA JOURNAL Publisher John Hood Garners Praise for His Most Recent Book:

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

The problem of rape and sexual assault statistics

Misused Data, But Not Official Numbers, Point to College Rape Crisis

By JON SANDERS
Assistant Editor

RALEIGH
A news article in *The Daily Tar Heel* April 24 contained a shocking lead: "A woman is raped every two minutes. Almost one in every four women between the ages of 18 and 24 is a survivor of sexual assault."

No sources for this information are given — which is mildly surprising since it is published in the campus newspaper for the University of North Carolina at Chapel Hill, a UNC flagship university with a well-known school of journalism. It is not, however, unusual for any campus discussion of that particular subject. Here are a few examples just from the current academic year:

- "There are probably 200 to 250 undergraduate men on this campus who are rapists (one out of 15), based on a 15-year old survey. Fifteen percent of undergraduate men say they would commit rape if there was no chance of punishment." Jillian Johnson, "Stop Rape at Duke," *Duke University Chronicle*, Feb. 27, 2003

- "1 in 4 college women," sign seen at UNC-Chapel Hill protest of violence against women, as reported in the *DTH* Nov. 5, 2002

- "Anytime a woman is drunk and has sex, she has then been raped." Andrew A. Farr, N.C. State *Technician*, Sept. 24, 2002

- "Every three hours and 52 minutes, a rape is committed in North Carolina. Most of the victims are women. One in four college women report surviving rape." Dana Henderson, *Technician*, Sept. 10, 2002

- "I am 100 percent sure that at least one rape has occurred on campus since school has started ... anywhere from one in three to one in eight women will be assaulted in her lifetime." Bryan Proffit, *Technician*, Aug. 27, 2002 (one week after school started)

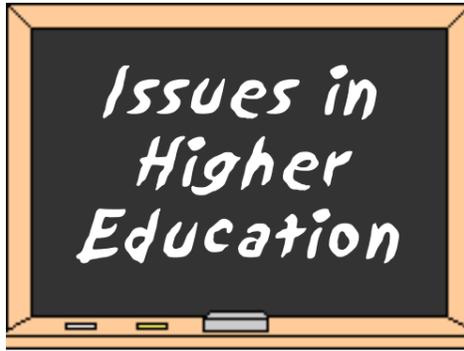
What is going on? Are our universities undergoing an epidemic of curiously unreported rape? Or is something else at work? As Katie Rophie wrote in the *New York Times Magazine* of June 13, 1993, in response to the one-in-four statistic: "If 25 percent of my women friends were really being raped, wouldn't I know it?"

Christina Hoff Sommers, author of *Who Stole Feminism?*, has provided the answer. The one-in-four statistic hails from a 1985 *Ms.* magazine report by Mary Koss. Koss interviewed about 3,000 randomly selected

college women about sexual violation. She determined that 25.7 percent were victims of rape or attempted rape "because they gave answers that fit Koss's criteria for rape" — which bear scrutiny, as they are "penetration by penis, finger, or other object under coercive influence such as physical force, alcohol, or threats." Those broad criteria may explain why only 27 percent of Koss' "rape victims" considered themselves to be rape victims. Also, Koss considered a woman a victim of sexual assault if she answered "yes" to (and 53.7 "victims" did) "Have you ever given in to sex play (fondling, kissing, or petting, but not intercourse) when you didn't want to because you were overwhelmed by a man's continual arguments and pressure?"

University of California Berkeley Professor Neil Gilbert pointed out a key flaw in that study: Koss's categorizing as having been raped any woman who answered "yes" to "Have you had sexual intercourse when you didn't want to because a man gave you alcohol or drugs?" As Gilbert wrote in *Current Controversies in Family Violence*, edited by Richard Gelles and Donileen Loseke, "What does having sex 'because' a man gives you drugs or alcohol signify? A positive response does not indicate whether duress, intoxication, force, or the threat of force were present; whether the woman's judgment or control were substantially impaired; or whether the man purposefully got the woman drunk in order to prevent her resistance to sexual advances."

Sommers also points out a key flaw in the "one-in-eight" statistic cited above, which is from Dean Kilpatrick's National Woman's Study. Kilpatrick's study is "a fairly straightforward and well-designed survey" on rape and asked questions about intercourse, oral sex, anal sex, or penetration by "fingers or objects" done "against your will by using force or threat of harm." The last category, however, as Sommers explains, "includes cases in which a boy penetrated a girl with his finger, against her will, in a heavy petting situation. Certainly the boy behaved badly. But is he a rapist?"



Probably neither he nor his date would say so," she wrote. "Yet the survey classifies him as a rapist and her as a rape victim."

Politics intrude

The problem of the faulty statistics owes to "the intrusion of politics into the field of inquiry," Sommers said. "There are many researchers who study rape victimization, but their relatively low figures generate no headlines." Among them: a 1993 Louis Harris and Associates telephone poll that found only 2 percent of women were victims of rape or sexual assault; Professor Mary Gordon of the University of Washington's 1981 study that found only one in 50 women raped; and Duke researcher Dr. Linda George, who found, using "questions very close to Kilpatrick's" one in 17.

Another problem Sommers cites is "the morally indefensible way that public funds for combating rape are being allocated." Specifically, "college women are getting the lion's share of public resources for combating rape" despite studies (which she cites) showing that rape rates are far higher in poor areas than wealthy areas and far lower for women on a college or university campus than for women off campus.

Underscoring that latter fact, UNC-Greensboro students are dealing with the reality of a serial rapist who is attacking women in neighborhoods near campus (seven had been attacked by mid-April). Major J. C. Herring, assistant chief of UNCG Police, wrote to the *UNCG Carolinian* April 7 pointing out that "None of the attacks occurred on campus" and said "the University should use the incidents to encourage students to live on campus where they have the benefit of secured residence halls, well lighted streets, a professional police force, and the safety escort service."

At UNC-CH, meanwhile, the *DTH* story cited at the beginning of this article contrasted the "one-in-four" claim with UNC-CH's comparatively low numbers of "only two rapes [on campus] in 2002 and only 17 sexual assault victims." For the *DTH*, "the numbers don't add up" — and it takes the "one-in-four" statistic as gospel truth while viewing UNC-CH police's official numbers as clearly wrong and indicative of a greater problem.

UNC-CH's solution underscores Sommers' point about rape resource allocation. "UNC officials submitted a grant application last week to the U.S. Department of Justice," the story said. "If the grant is approved, the money will be used to re-evaluate UNC's Sexual Assault Response Plan, add an antiviolence program to C-TOPS and create a media campaign against violence at the University, said Melinda Manning, assistant dean of students." *cj*



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¥ Locke Foundation President John Hood discusses the military history of other, more ill-fated incursions up the Tigris and Euphrates rivers to Baghdad.

¥ Moderate Muslim clerics preach peace in Durham and Greensboro while a former Black Panther leader calls First Lady Laura Bush a murderer at Duke.

For the latest news, analysis, and commentary on the war on terrorism, visit what National Review once named its Cool Web Site of the Day located at www.NorthCarolinaAtWar.com or www.NCAatWar.com.

Town and Country

Racial discord in Chapel Hill

A forum on Chapel Hill's street fairs grew heated May 13, with issues of race arising in the discussion, the *Herald-Sun* of Durham reports.

The first speaker, Maxecine Mitchell, said she thought some of the criticism aimed at the post-Apple Chill gathering was racist, and that it sent a message that some residents "don't want black people here." Apple Chill is a town-sponsored street festival held in April, which is followed by an unofficial gathering of hundreds of people who drive cars and motorcycles or circulate on foot around part of West Franklin and other streets.

Many participants in the "After Chill" gathering are black, although people of other races join in the gathering as well.

The forum was held by the town's Street Fair Review Committee, which is looking both at Apple Chill and Festifall. The Town Council started the process last year after resident Eunice Brock petitioned the council to either do away with both festivals or make major changes.

Former Recreation and Parks Director Hank Anderson created the fair about 30 years ago in an attempt to foster better racial relations.

New routine for dance classes

Arts dance classes could be spun off into a private, nonprofit organization if the Greensboro City Council cuts the City Arts budget for a second straight year, the *News-Record* of Greensboro reports.

Greensboro Parks and Recreation administrators have proposed eliminating the City Arts dance director's job and having a nonprofit group oversee the program instead.

Instructors would move from the city payroll to teaching classes under contract. The city would still provide space and advertising; instructors would collect student fees and rent space from the city.

A vacant City Arts secretary's position also would be cut.

Parks and Recreation Administrator Ed Deaton proposed the changes after the city manager's office, projecting continued tight budgets, asked departments to cut expenses without cutting service.

Asheville eases vendor rules

Asheville City Council voted 4-3 May 13 to amend a sidewalk ordinance that now also allows vendors to operate pushcarts from 7 a.m. to 10 p.m. in a space of no more than 24-square feet, according to the *Citizen-Times* of Asheville.

The changes allow vendors longer business hours and greater flexibility on cart size.

Debate sparked last-minute changes to the ordinance after council members and citizens learned that Anderson Davis's downtown hotdog stand could be illegal.

Most of the discussion about cart size and regulations centered on Davis's hot dog stand, which served as a model for changes. City Council members wanted to make sure the vendor and 11 other enclosed pushcart owners could continue to operate under old regulations. *CJ*

Rain Tax May Fall on Residents of Towns*Storm-water management programs required by EPA begin to filter down*

By DONNA MARTINEZ

Associate Editor

RALEIGH

North Carolina's rainfall is a source of the lush landscape and natural beauty that attracts thousands of tourists each year. But for residents, rain and the ensuing runoff have become yet another excuse used by cities and towns to raise taxes.

Municipalities call them storm-water utility fees, but those who oppose them say they're taxes in disguise. Regardless of the label, the result is a steady and mostly unnoticed revenue stream flowing into government coffers sucked dry by ever-increasing local spending and the loss of state reimbursements.

Residents of some large metropolitan areas have been paying the rain tax as part of their water bill since the early 1990s. The charge stems from storm-water management programs required by the Environmental Protection Agency as an outgrowth of the Clean Water Act. Seven other communities reported charging utility fees for storm runoff programs implemented on their own, in a 2002 survey by the North Carolina League of Municipalities.

Smaller cities, town next

But residents who live in one of about 125 less-populated cities and towns should get ready. Expanded EPA regulations now require smaller municipalities to comply with storm runoff rules. Whether these governments will institute rain taxes is the \$64,000 question.

"There's no federal law that requires them (local governments) to raise funds this way," said Rep. Paul Stam, R-Wake, a lawyer whose firm represented clients in lawsuits against Durham and Greensboro over their rain taxes. "They know the storm-water programs need to be done." Stam contends the localities should shift existing budget dollars to the program rather than instituting a new fee.

Instead, Durham, Greensboro, and three other urban centers levied fees to comply with 1990's Phase I of the National Pollutant Discharge Elimination System law. It requires cities of 100,000 or more population to control trash, lawn pesticides, and other debris that collect in storm-water runoff and discharge into lakes and rivers. Large construction sites and 10 categories of industrial activity also faced strict rules.

Charlotte, Winston-Salem, Fayetteville, and Raleigh also were snagged in the population net and implemented storm-water management programs. Only Raleigh bucked the trend and operates its program from the general fund.

But that may change. The Raleigh City Council is considering creating a storm-water utility to charge each household \$3 per month. Existing big-city residential rain taxes range from \$1 per month in Fayetteville, to \$3.77 in Charlotte. Commercial assessments are higher and typically based on formulas related to the amount of impervious surface on the property.

If it smells like a tax...

Stam thinks politicians are playing a semantics game that attempts to equate the rain tax with what he says is a true utility fee, in which a person pays for a service, and starts and stops the service at will. He says the fees are a clever way to raise taxes without saying so. "You can't disconnect from this thing," he said. "It smells like a tax, eats like a tax, it's a tax."

"Certainly, people have commented on that," said Bradley Bennett about the tax or fee debate. Bennett hears from the public and local officials in his job as supervisor of the Stormwater & General Permits Unit of North Carolina's Department of Environment and Natural Resources, Division of Water Quality, which administers the EPA program.

"Communities are looking for ways to have an effective program. Obviously, they need a way to do this," he said. Bennett agrees with Stam that nothing in the EPA rules requires a municipality to levy a fee or tax.

Now that Phase II of NPDES is taking effect, smaller communities are on the hook. According to the EPA web site, the rules "further reduce adverse impacts to water quality and aquatic habitat by instituting the use of controls on the unregulated sources of storm water discharges that have the greatest likelihood of causing continued environmental degradation."

In common language, it means that communities of 50,000 or more population must create storm-water programs with six focus areas: public education and outreach; public participation and involvement; illicit discharge detection and elimination; construction site runoff control; post-construction runoff control; and pollution prevention/housekeeping.

The state has discretion about whether even smaller locales of 10,000 or more population must institute detection and prevention programs. That decision-making process is under way.

Price of housing rises

Lisa Martin, director of regulatory affairs for the North Carolina Home Builders Association, is concerned about how the construction-related components of the rules will affect her members.

"They (the state) are expanding the program well beyond what the feds intended," Martin said. She contends that the cost of new homes will increase because of the requirements.

"The more controls on building, the more cost that will be passed down," Martin said, adding that entry-level home homebuyers will be most affected. Any additional cost can edge them out of the market, she said.

Bennett acknowledges Martin's concerns, but defends the importance and "pro-active" nature of the Phase II rules. "The big thing is the water quality and potential impairment and problems," he said. "You're looking at trying to save problems down the road."

Martin agrees that some runoff controls are necessary in major markets, but ques-



The law requires cities to control pollutants that filter into streams.

tions the inclusion of some smaller communities.

Belville wins an exclusion

She cites the Town of Belville in Brunswick County as an example. The town of 300 was designated a Phase II community because it's considered part of the Wilmington urbanized area.

"They don't have enough development to warrant this," Martin said. Belville Mayor James A. Cain III agrees that, with two main roads and "very little industry," his community poses little threat to water quality.

Since it doesn't own and operate a sewer system, the town officially asked the state to drop it from the list of those required to implement a runoff program, and Cain said the state recently agreed.

Bennett, however, said that while the state has accepted the town's certification about the sewer system, that fact may not completely eliminate Belville's responsibilities. "The town still might be required to comply in some way," Bennett said.

Although the mayor said he's relieved, he's still concerned about one thing. He said the town was assured by the state for more than a year that it would have to comply, so Belville paid \$5,000 for special software to manage the program, Cain

said. Now the box sits on a shelf and Cain hopes for a refund. "I figure that's just the way government works," he said of the confusion.

In the meantime, cities and towns across the state await word on whether they must comply. Bennett said his department will submit proposed final rules to the General Assembly for approval next session. Once program implementation begins and rain taxes appear in more municipalities, Martin predicts North Carolinians will get vocal.

"As more people become subject to fees, they'll be calling their legislators," she said. *CJ*

"There's no federal law that requires them (local governments) to raise funds this way."
— Rep. Paul Stam
R-Wake



Interstate 95 runs for 182 miles through North Carolina and only one of the state's large city.

Federal program has never been used

Department of Transportation Considers Tolls for Interstate 95

By MICHAEL LOWREY

Associate Editor

FAYETTEVILLE

NC. Department of Transportation officials are examining the possibility of rebuilding Interstate 95 through toll collections under a never-before-used federal pilot program. It will be several years, however, before anyone pays their nickel (or dollar) to drive on the interstate.

I-95 is something of an oddity. It is a major north-south road in a state with an east-west orientation. While the road runs for 182 miles through North Carolina, it serves only one of the state's dozen largest cities, Fayetteville.

Aside from a 40-mile stretch forming part of the interstate link between Raleigh and Fayetteville, I-95 also does not serve to connect the major population and business centers of the state.

What I-95 does do is serve as a convenient route for motorists driving between the Northeast corridor and Florida. Many of the travelers, however, will spend little time, and money, in North Carolina.

With highway dollars always being in demand, North Carolina has not made improving I-95 a priority. The 1989 law specifying which intrastate road projects would be funded through the Highway Trust Fund contained no provisions for major work on I-95. Likewise, the state's current Transportation Improvement Program, which lists the state's road plans for the next seven years, includes no major upgrades on the road.

Still, I-95 will eventually need rebuilding as traffic increases in the future. The road already has a far higher fatality rate than other interstates in the state. I-95's outdated design, with limited room to accelerate and merge, is a factor as is the long-haul nature of the road's users.

Federal toll pilot program

The Transportation Equity Act for the 21st Century, passed by Congress in 1998, includes a pilot program, known as section 1216(b), allowing for interstate highways to be converted into toll roads. Under section 1216(b), the Federal Highway Administration can approve up to three such projects, each in a different state.

The agency set a March 31, 1999 deadline for applications. After no states applied, the FHWA changed the approval process to first come, first serve with no set deadline for applications. Aside from North

Carolina, Arkansas, Texas, Michigan, and Virginia have all expressed at least some interest in interstate toll road conversion, though none have yet filed a formal application with the FHWA.

The reason for this limited interest to date is the strict requirements set by the federal government. Section 1216(b) cannot, for example, be used as a means to simply impose a toll at, and only at, the state border.

Before the FHWA will approve an application, a state must demonstrate that the only way the interstate can be reconstructed or rehabilitated is through conversion to a toll road. Existing and future state and federal funding sources must be shown to be inadequate for the work needed.

The FHWA will also figure the age, condition, and intensity of use of the road when determining whether to approve a request as well as the interests of local, regional, and interstate travelers.

In addition, any local metropolitan planning organizations must be consulted about the placement and nature of tolls. The tolls must last for at least 10 years and a state would not receive federal maintenance money for the interstate while it was a toll road.

Conversion of I-95 to a toll road outside the pilot program is likely not a workable option. Such a move would require the consent of Congress and that the state repay all federal money used to build and maintain the portion of interstate that becomes a toll road. While an exact figure is not available, the bill is likely to be in the hundreds of millions of dollars.

Path forward unclear

While section 1216(b) offers a possible means to convert I-95 to a toll road, many uncertainties remain. The N.C. Department of Transportation has contracted for a study to determine the cost of improving I-95 and the potential revenues from and costs of collecting tolls.

Based on the result of this outside report the N.C. DOT may recommend that the state proceed with an application. Such a move would also ultimately require the approval of the General Assembly. The report should be out this summer.

Unknowns also exist on the federal side. The pilot program obviously requires a detailed proposal, which balances off a variety of interests. Given that no state has yet applied, it remains to be seen exactly what the FHWA will find acceptable. *cf*

Local Innovation Bulletin Board

NYC Rent Control Questioned

New York City's rent stabilization, or rent control, provides little benefit to residents of the outer boroughs and lower- and middle-income neighborhoods in Manhattan, according to a new report by the Manhattan Institute. The only areas whose residents receive a substantial subsidy live in the relatively affluent areas of Lower and Mid-Manhattan.

The median monthly subsidy provided by rent stabilization for all of New York City is \$42. In the higher-income areas of Lower and Mid-Manhattan, the median monthly subsidy from rent stabilization is \$397. By contrast, the median subsidy in the Bronx is \$58, in Upper Manhattan it is \$9, in Brooklyn it is \$5, while in Queens and Staten Island the subsidy is effectively zero.

The report also finds that deregulating rental prices would not lead to significantly higher rents for most apartment dwellers. Rent increases for residents of neighborhoods outside the affluent part of Manhattan would be minimal to nonexistent because their rents are not significantly below market prices now.

In an unregulated housing market, the supply would expand in the affluent areas of Lower and Mid-Manhattan, creating downward pressure on rental rates.

If rental prices were completely deregulated, the median monthly rent of subsidized housing would increase by only \$8 because of the expansion of the unregulated market. If rental rates were deregulated only when vacancies occur, the median monthly rent increase during the first two years would be \$35.

Researched by Henry O. Pollakowski, "Who Really Benefits From New York City's Rent Regulation System?" Civic Report No. 34, March 2003, Manhattan Institute.

Incinerate, don't recycle

It is better to incinerate cardboard, plastics, and garbage than to recycle them, which is a waste of time and money, according to environmental experts in Sweden and England. They advocate the construction of more incinerators to dispose of waste.

Swedish environmentalists claim

that incineration "is best for the environment, the economy, and the management of natural resources." That is because it costs more to turn finished products into reusable materials than to use raw materials. Recycled bottles cost glass companies twice as much as making glass from raw materials, and recycling plastics is even more uneconomical.

Technological improvements have made incineration cleaner. Because plastics are made from oil, they are easily used to generate electricity. In addition, incineration will save space in landfills.

British authorities have drawn up plans to build as many as 50 incinerators in an attempt to eliminate a growing mountain of waste and cut the amount of garbage going to landfills.

Reported in the *Washington Times*.

Electronic loop provisioning

Everyone wants high-speed Internet service (broadband) spread across the country. But some think the only way to roll out broadband rapidly is to abandon the pro-competitive provisions of the Telecommunications Act of 1996 and hope that the regional Bell operating companies will accelerate broadband investment in a race for profits.

Fortunately, there is a way to expand broadband without undermining local phone competition. The fix involves using a next-generation, low-cost technology called ELP (electronic loop provisioning). "Loop" refers to the local loop — the local telephone lines and poles, conduits, and switches that connect individual users to the outside world. "Provisioning" refers to the cumbersome process that sets up and cross-connects both voice and data circuits electronically.

ELP would give competitors the same access to customers as the Baby Bells now enjoy. There are additional benefits to the technology. It would make it possible to switch customers from one company to another with the ease as long-distance service is now switched.

ELP can deliver broadband speeds 30 to 100 times faster than current rates.

Researched by Laurence J. Kotlikoff, "Breaking the Logjam: A Technological Fix," *Milken Institute Review*, First Quarter 2003. *cf*

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City and Developer Win But Landowner Loses

By DONALD J. KOCHAN, J.D.
Guest Contributor

ARLINGTON, VA

Imagine the government kicking you out of your home or business only to give your property to another private individual whom it prefers? It may seem implausible in a country like the United States, but uses of the "eminent domain," or "condemnation," power by government to wrest private property from one person for the benefit of special interests is hardly unheard of.

Virginia allows condemnation

A Jan. 10 court opinion examined this issue. In *Ottofaro v. City of Hampton*, the Virginia Supreme Court heard a case in which the City of Hampton condemned the property of private landowners, Frank and Dana Ottofaro. A small portion of the condemned property was to serve as a road. The residue of the land was to be transferred to the Hampton Industrial Development Authority, a political subdivision of the Commonwealth of Virginia. Two months after the condemnation decision was made, the authority entered into an agreement with a commercial development project for the use of the former Ottofaro land as part of a retail shopping center.

The Virginia and U.S. constitutions specifically restrict the condemnation power to "public uses," forbidding government from taking private property unless the government proves that the property is necessary for its operation or otherwise needed to meet its obligations to the citizenry. This vital concept is too often lost on government officials and, unfortunately, on many courts.

Quoting past precedent, the Virginia Supreme Court cautioned that "a due protection for the

rights of private property will preclude the government from seizing it [from] the hands of the owner, and turning it over to another on vague grounds of public benefit from the more profitable use to which the latter may devote it."

Despite this strong language which sounds protective of property rights, the court nonetheless upheld the condemnation of the Ottofaro property against a challenge that it constituted an illegitimate "taking" for private use. The portion condemned for the road, it found, would be used by the public. That seems to pass the public-use test, so long as there is no evidence the road is only necessary to provide access to a shopping mall.

However, the court's justification for the condemnation of the rest of the Ottofaro property seems less convincing. The court found no evidence that the residue would be "conveyed to a private entity." Why? Because it would be transferred to the development authority which, in turn, "will lease the property to a private developer." Does filtering the ultimate transfer to private

development through a Commonwealth agency really remove any potential "private use" taint?

Condemnation for private commercial development projects has long been sanctioned by many courts, so long as the legislature or a municipality can claim that the ends are in the "public interest." Yet, governments have proven themselves to be poor economic planners and susceptible to the influences of special interests.

Regardless of whether the full factual record in the Ottofaro case proves the landowners' claims, it is at least an instructive example of the potential harm inherent in the condemnation power when political entities have broad discretion in its application and commercial development is in play.

There are dangerous incentives. Suppose Company Z wants to build a new factory, but there are homes in its way. The homeowners, for reasons either economic or sentimental or both, refuse to sell.

So Company Z uses its political clout to persuade the city to condemn the private property, force the owners out, and grant Company Z title or a lease. The transaction often will cost far less than if the company had to buy the property on the open market.

Municipal conflict of interest

Municipalities have at least two incentives to engage in such transactions: first, to curry favor with private companies; and second, because the new owners will likely generate significantly more tax revenue. At the end of the process, the coercive power of eminent domain has been used to kick a private property owner off his land for the mutual benefit of the developer and the municipality.

Private negotiations in property disputes are often more costly than an investment in convincing the state to condemn. If an owner refuses to sell or demands a price higher than the interested buyer is willing to pay, the market provides no means by which the interested buyer can force the owner off the land. When takings for private use are allowed, the state becomes merely an agent of coercion, with the interested buyer as its principal.

As James Madison observed in 1792, a just government "impartially secures to every man, whatever is his own." Without judicial reanalysis of constitutional limitations on condemnation or legislation that specifically reins in the condemnation power, private property rights in Virginia may not receive this impartial protection. CJ

Donald J. Kochan is a visiting assistant professor of law at George Mason University School of Law in Arlington, Va. and a member of the Board of Scholars of the Virginia Institute for Public Policy, an education and research organization, which has headquarters in Potomac Falls, Va.

From Cherokee to Currituck

Cary Reconsiders Impact Fees After Growth Slows to a Crawl

By MICHAEL LOWREY

Associate Editor

CHARLOTTE

After experiencing lower than anticipated growth, Cary is reconsidering the amount it charges in water, sewer, and transportation impact fees.

"Our intent was to manage our growth; it wasn't to stop it completely," Mayor Pro Tem Jack Smith told the *News & Observer* of Raleigh.

Cary adopted the impact fees in an attempt to control the rapid growth that the town experienced from the 1970s through the late 1990s. Cary's population went from less than 9,000 in 1972 to more than 103,000 last year.

In the past few years, a weak economy has slowed growth dramatically throughout Wake County. Things have since started to pick up again throughout most of the county, but not in Cary. With the higher impact fees, Cary had hoped to achieve 4 percent per-year population growth. Last year, however, only 466 residential building permits were approved in the town. The town's population is estimated to have grown by only 1.74 percent between April 2002 and April 2003.

"Developers will pay a premium to build in Cary, but then you have to look at what amount of premium they will pay," Councilwoman Jennifer Robinson said to the *N&O*. Robinson and a majority of the Cary Town Council are concerned that Cary may be effectively pricing itself out of the market.

While many communities have impact fees, Cary's are especially high. The town, for example, often charges six times or more than what Raleigh does on a similar project.

A recent case highlights the differences in fees. A local developer and Rex Hospital are planning to build a 63,000-square-foot medical office complex in Cary. The town will collect \$460,000 in impact fees from the project. By comparison, the impact fees for a similar project in Durham would be less than \$120,000. In Raleigh, such a project would incur less than \$55,000 in impact fees.

Greensboro panhandling ordinance

As reported last month in *Carolina Journal*, Greensboro has also been considering and has since adopted a new, stricter, ordinance on panhandling. Implementing the new regulations, however, is proving to be a challenge.

"The process got ahead of my office," city Tax Collector John Rascoe said to the *News & Record* of Greensboro. Rascoe's department is responsible for issuing the panhandling licenses the new ordinance requires. There is no cost to obtain a license.

Among the things still being sorted out is what the license will look like. Rascoe is certain, though, that the specific restrictions on panhandling, including time and distance rules and a prohibition on lying about military service, will be printed on the back of the licenses.

Until the new licenses are ready, beggars will be given receipts showing they have applied. Ordinarily, Rascoe's office would mail licenses when they are ready, however, many panhandlers do not have mailing addresses. In such cases, they will

simply be asked to come by at a certain date to pick up their licenses.

Another issue facing Rascoe is the ordinance's requirement that applicants present a photo ID. Many homeless people do not have identification. "I, as the tax collector, have had to decide what was acceptable," Rascoe said.

So far Rascoe has accepted only military or state-issued identification.

Chapel Hill panhandling ordinance

A new ordinance went into effect May 1 in Chapel Hill prohibiting panhandling at night. The new law comes after police complained that previous rules on begging in public were essentially unenforceable.

On March 28, the Chapel Hill Town Council adopted the new ordinance by a 7-2 vote. The council had rejected the change, but changed its position after town officials and police officers noted the difficulties in enforcing the town's aggressive panhandling ordinance, which required that both the complainant and the beggar appear in court.

Under the new restriction, a violator could be subject to a \$50 fine and seven days in jail.

Opposition to the ordinance was centered on whether it stifled free speech. "This ordinance creates a new criminal act in the choice of words on Franklin Street," said Councilman Mark Kleinschmidt, who voted against the change.

New tax to build runway

Passengers flying through Charlotte Douglas International Airport are likely to be paying an extra \$3 per flight starting this fall. The receipts would be used in part to help fund a new runway.

Federal regulations allow airports to charge a fee, called a passenger facility charge, to pay for improvements at airports. The Federal Aviation Administration recently noted that 85 of the nation's 100 top airports have the charge of either \$3 or \$4.50 per departing passenger. Airports in Fayetteville, Greenville, New Bern, and Wilmington already charge \$3. The fee is \$4.50 in Asheville.

The new runway, the airport's fourth, has been in the works for over a decade. The 9,000-foot runway would be parallel to two existing runways, and would greatly expand the airport's capacity. US Airways, which has a major hub at Charlotte, strongly supports building the new runway. The runway could be ready for service by early 2006. The airport has already paid \$80 million to acquire land. Building the runway and associated taxiways is estimated to cost an additional \$80 million.

Charlotte's decision to adopt the fee reflects the new realities in aviation. The federal government paid for 75 percent of the cost of the airport's third runway, which opened in 1979.

The FAA, however, after Sept. 11, is now obligated to spend more on security-related items, reducing its ability to fund airport improvements. It is unlikely to be able to fund as much of the cost this time. The city will be responsible for whatever portion of the cost the FAA does not pick up. CJ

"When takings for private use are allowed, the state becomes merely an agent of coercion, with the interested buyer as its principal."

Sen. Fern Shubert: Bill Would Curb Driver's License Fraud

N.C., a magnet for illegal immigrants and criminals, issued at least half a million bogus licenses, senator says

By JENNA ASHLEY
Editorial Intern

RALEIGH

Sen. Fern Shubert of Union County is sponsoring a bill that would strengthen laws governing the issuance of driver's licenses and voter registration in North Carolina.

CJ: Tell me about Senate Bill 531. What made you want to author this bill?

Shubert: Basically, what we're trying to do is get the state to quit handing out real, government-issued identification without any idea of who they're giving it to. It came to my attention over two years ago that we were giving identification to people who we didn't know who they were. We knew that it was a problem, but we didn't realize that it was a statewide problem until a bill came up in committee and a whole group of us jumped on it at the same time. Then we started comparing notes and we realized that this is one huge problem and it starts really with the governor making the decision that we don't care if people come here and give false information.

CJ: Are North Carolina's licensing law significantly less rigorous than those in other South-eastern states are?

Shubert: Absolutely. There are only three states in the country now that issue driver's licenses to illegal aliens, and I know Tennessee is in the process of reconsidering that. The 9/11 terrorists had licenses from Florida and Virginia, but they have since improved their licensing process. We basically have a doormat out now saying, "Come to North Carolina if you want a real driver's license without telling who you really are." Sex offenders in California, you want a new life? Come to North Carolina! Lost your license driving under the influence? Hey, not a problem! Get another one with a different name!"



Sen. Fern Shubert

CJ: How easy is it to obtain a license here? What information do you have to provide?

Shubert: When this started when North Carolina's then Attorney General Easley's office told the DMV that just because the driver's license supposedly requires a Social Security number, if they don't have one, don't hassle them. Just put 999 for the SSN. Since then, they have issued over 400,000 bogus licenses and it's entirely possible that they registered that many people to vote that have no business voting in North Carolina. We have no idea, and the officials who run the state don't want to tell us.

When we caught them, before 9/11, they wouldn't do anything about it.

In the wake of 9/11, they realized they had to take action, so they began a massive publicity campaign saying they have tightened enforcement, but it is pretty much a joke. The proof of residency is hilarious: You can use a document from a foreign government, which we have no way to verify. You can also use business letterhead that you make yourself.

But, my all-time favorite for the lazy terrorist who doesn't plan ahead, the DMV will run off an affidavit for those who have no proof of residence. They sign it and the affidavit becomes the proof. That's why people come in by the busload to get their licenses, because we give them away more easily than anyone else.

CJ: What are some of the possible repercussions of North Carolina's lax licensing laws?

Shubert: 9/11. We had the father of one of the 9/11 victims testify the last time we attempted to correct this problem. He said that if we don't do something about this, the next terrorist attack is on our hands. People can come here and get a license and then go anywhere else in the country and use it as their identification. Some states have said they will begin to refuse reciprocity with

North Carolina licenses because they are a joke. There is a huge social cost. You can't blame people for wanting to come here, but you can ask them to follow our laws. If you don't have the rule of law, you don't have anything. And we are, as a state, actively undermining the rule of law.

CJ: Voter fraud is also a serious problem. Do you think it stems from inadequate legislation, or could it be an enforcement problem?

Shubert: I have said from the beginning that the only thing significant enough to come up with laws this dumb is planned voter fraud. And there is a bill in the House, and I'm sure it's a coincidence, for same-day registration and voting that says they have to accept the driver's license for proof of identity for voting.

They issued over 400,000 with 999 for the Social Security number. We know they issue 75,000 a year using affidavits. This does not count the number of people using business letterheads or documents from foreign countries to get their licenses.

Minimum we have over one-half million phony driver's licenses circulating. Personally, I think we have well over a million.

My guess is that the cost to the state is at least a billion dollars.

CJ: Who opposes the bill, and why?

Shubert: Mike Easley, Roy Cooper, Wayne Hurder. All the leadership within the Democratic Party. Last year, I tried to amend a bill

"If the public gets behind it, it will happen. Our state is the biggest source of real fake IDs in the world. We've got to stop it."

that retail merchants wanted dealing with driver's licenses and underage drinking. The House Majority Leader Phil Baddour came to my office and said that if I ran my amendments, he would pull the bill and have it killed.

I'd say it's very clear that they don't like this legislation. And they have already begun to attack us: we're anti-immigrant, anti-Hispanic. I have no problem with Hispanic immigration, but I do think that they should come through the standard process so we know who they actually are.

CJ: What are the prospects of this bill becoming law?

Shubert: If the public gets behind it, it will happen. Our state is the biggest source of real fake IDs in the world. We've got to stop it.

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From the Liberty Library

• We are passing through an eerie phase of history, writes J. Budziszewski, in which the things that everyone really knows are treated as unheard of, a time in which the elements of common decency are themselves attacked as indecent. But Budziszewski, in *What We Can't Not Know: A Guide*, sets out to explore the lost world of common moral truths — what we all really know about right and wrong. Bolstering the confidence of plain people in their common moral sense, Budziszewski explains its rational foundations and why it is under attack. His account shows how to address the uncertain, the disoriented, and the self-deceived among our neighbors in a way that may bring them back to moral sanity. Published by Spence, at www.themarketplace.com/Spence.

• In his book *The Crisis of Islam: Holy War and Unholy Terror*, Bernard Lewis examines the historical roots of the resentments that dominate the Islamic world today and that are increasingly being expressed in acts of terrorism. He looks at the theological origins of political Islam and goes through the rise of militant Islam in Iran, Egypt, and Saudi Arabia, examining the impact of radical Wahhabi proselytizing, and Saudi oil money, on the rest of the Islamic world. *The Crisis of Islam* ranges through 13 centuries of history, but in particular charts key events of the 20th century leading up to the violent confrontations of today: The creation of the state of Israel, the Cold War, the Soviet defeat in Afghanistan, the Gulf War, and the Sept. 11 attacks. More on the Internet at www.randomhouse.com/modernlibrary.

• “Liberals’ loyalty to the United States is off-limits as a subject of political debate. Why is the relative patriotism of the two parties the only issue that is out of bounds for rational discussion?” Syndicated columnist Ann Coulter asks that question in *Treason: Liberal Treachery from the Cold War to the War on Terrorism*. She contends that liberals have been wrong on every foreign policy issue, from the fight against communism at home and abroad, the Nixon and the Clinton presidencies, and the struggle with the Soviet empire up to today’s war on terrorism. “Liberals have a preternatural gift for always striking a position on the side of treason,” says Coulter. “Everyone says liberals love America, too. No, they don’t.” Learn more about her June release at www.randomhouse.com/crown/.

• In his bestselling *More Guns, Less Crime*, John Lott proved that guns make us safer. Now, in *The Bias Against Guns: Why Almost Everything You've Heard About Gun Control is Wrong*, Lott shows how liberals bury pro-gun facts out of their own bias. Lott refutes gun critics and shows: how TV talking heads promote gun control in the guise of “news;” how reporters “spike” pro-gun stories; how government statisticians “cook” data for the antigun lobby; and why “assault weapons bans” and “gun show” regulations are counterproductive. Want the facts? John Lott has them. More information available at www.regnery.com. CJ

Book Review

All the President's Children: Hail to Storytelling

• Doug Wead: *All the President's Children: Triumph and Tragedy in the Lives of America's First Families*; Atria Books; 2003; 464pp; \$26.

By DONNA MARTINEZ
Associate Editor

RALEIGH
The disturbing discovery in Uday Hussein's Baghdad palace must have made President Bush sick to his stomach. Plastered to the gym wall of Sadaam's sadistic son were photos of the president's 21-year-old twins, Barbara and Jenna. Captain Ed Ballanco told a reporter that soldiers removed the pictures “to protect the president.”

The story gave me the creeps and heightened my interest in Doug Wead's book, *All The Presidents' Children: Triumph and Tragedy in the Lives of America's First Families*. With the Bush daughters still on my mind, I was curious about the unique burdens and opportunities afforded children like Barbara, Jenna, and even George W. himself.

Wead was a special assistant to the first President Bush and worked on the 1988 campaign that returned him to the White House as Ronald Reagan's successor. During that time, Wead got to know George W. Bush as a presidential child. That makes his personal observations on the Bush father-son relationship and the two Bush administrations interesting and credible, but not new. Much has already been written about the two very close but very different men.

Thus, it's the stories of presidential families and children who lived before the age of the 24-hour news cycle that are the most compelling in this 300-plus-page book. Written in themed chapters — such as Triumphant Sons, Unfulfilled Promises, and Resilient Women — Wead introduces us to children from different families and eras who shared common experiences, shortcomings, and outcomes. It's an appealing approach and more enlightening than a predictable administration-by-administration list of life's winners and losers. This emotional connection adds context to facts and figures gleaned from traditional White House biographies and historical reviews.

Book Review

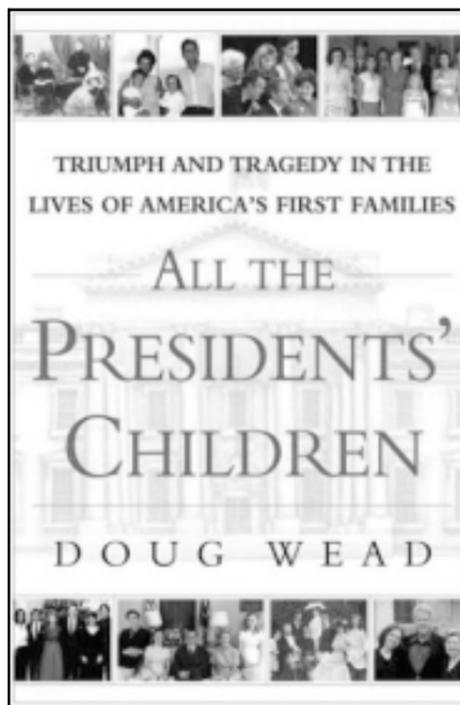
New White Nationalism Shows Need for Openness

• Carol M. Swain: *The New White Nationalism in America: Its Challenge To Integration*; Cambridge University Press; 2002; 526 pages, \$30.

By WALTER E. WILLIAMS
Guest Contributor

ARLINGTON, VA
Carol Swain teaches political science and law at Vanderbilt University. In *The New White Nationalism*, she warns about the growing “white nationalist” movement in contemporary America that she says threatens racial harmony.

Swain argues that over the last 10 years, this new white consciousness movement has gained strength by exploiting white resentment over racial preferences and double standards favoring blacks and other minorities. The movement has also exploited white anger over soaring inter-racial crime rates where, according to FBI 1997 statistics, of about 1,700,000 violent interracial crimes involving blacks and whites, 90 percent were committed by blacks against whites. Fifty-six percent of violent crimes committed by blacks have white victims, whereas only 3 percent of violent crimes committed



There are a variety of interesting tales, but two are especially fascinating.

In *The Search for Identity*, Wead writes of Franklin and Eleanor Roosevelt's five children (a sixth died before his first birthday). He contends that FDR was consumed by the presidency for more than 12 years and had little time for his four sons and daughter. “The trauma to his children is clear,” Wead writes. Their frequent poor judgments indicate the children were incapable of living happy, normal lives separate in the public's mind from their father.

In a sad illustration of this instability, Wead tells of the confusion he experienced researching their many marriages and divorces. Ultimately, the FDR Presidential Library confirmed that the Roosevelt relationship train wreck consisted of 19 marriages among the five children. Seven marriages and divorces occurred while FDR was in office. Even worse, one Roosevelt spouse committed suicide and another tried to do the same.

Scandals and controversy were recurring family themes over the years. But thankfully, at least one child finally estab-

lished a happy, successful life. Living in retirement with wife No. 5, Elliott Roosevelt cowrote 20 best-selling murder mysteries with his famous mom as a fictitious crime solver similar to Agatha Christie's Miss Marple.

FDR's kids could be considered lucky and their parents happily married when compared to the children of Franklin and Jane Pierce. The 14th president is remembered for the repeal of the Missouri Compromise, but the story Wead tells of Pierce's 11-year-old son, Benjamin, is an awful example that power sometimes comes at a tragically high price.

When Benjamin learned of his father's nomination, he was open with his concern. “I hope he won't be elected for I should not like to be at Washington and I know you would not either,” he wrote in a letter to his mother. It was sentiment they shared and, according to Wead, the religious Mrs. Pierce prayed for her husband's defeat. Two Pierce children had already died, and she believed God had taken them as a rebuke for her husband's political ambition.

Pierce won, and only weeks before taking office, the family's train car jumped the tracks between Boston and New Hampshire. Benjamin's skull was crushed; Franklin and Jane were unhurt. She was too distraught to attend the inauguration. When she later learned that Franklin had actively engineered his presidential nomination and was not a reluctant candidate as he claimed, “she was revolted,” Wead writes. To her horror, Jane Pierce believed her husband's ambition caused the deaths of their children. Can you imagine being a fly on the wall in their dining room? No elected office — not even the presidency — is worth that pain.

Wead is a good storyteller who packs a lot into each chapter, making this a page-turner. Savor the impact by reading a section or two and then taking a break.

If your interest is peaked about someone specific, like mine was about the Roosevelts and Pierces, check out the extensive bibliography and source notes. You'll find plenty of reading to keep your nightstand stacked for months. CJ

by whites have black victims.

According to Swain, the actual number of white hate groups is in question because of differences in classification by watch groups. As of 2000, the Southern Poverty Law Center, for example, puts the number at 554. Experts differ as to the threat posed by groups such as the Ku Klux Klan, Aryan Nation, and Skinheads. Some suggest that liberal watch groups might overstate hate-group threats in order to enhance their fundraising opportunities. Swain nonetheless sees them as significant threats and an important wakeup call for Americans to re-examine policies and truthfully confront racial issues.

I agree. Professor Thomas Sowell, who has written extensively on matters of race, has frequently pointed out that multiethnic societies are inherently unstable. “Group polarization has tended to increase in the wake of preferential programs, with non-preferred groups reacting adversely, in ways ranging from political backlash to mob violence and civil war,” Sowell said.

Swain agrees with Sowell's findings, saying that racial preferences create a made-to-order grievance for white nationalist

groups and their recruitment strategies. Black and Hispanic emphasis on group pride, group self-determination, and multiculturalism have provided white nationalists with justification for advocating parallel forms of white solidarity seeking to protect white interests.

In fact, David Duke formed the first National Association for the Advancement of White People in response to his college experiences. He became upset because whites were not allowed to express racial pride while blacks faced no condemnation for doing so. One of the most important parts of Swain's book is her discussion of what needs to be done. Mainly there must be open and honest discussion of racial issues in academia and the political arena. She says that one of the reasons for the avoidance of honest discussion in the political arena is “not to offend the affluent blacks in the Democratic Party coalition.” All in all, I recommend Swain's book as worthwhile reading. CJ

Walter E. Williams is professor of economics at George Mason University.

Book Review

Bountiful Harvest Separates Wheat From Chaff in Environmentalism

• Thomas R. DeGregori: *Bountiful Harvest*; Cato Institute; 2002; 207pp.; \$12.95

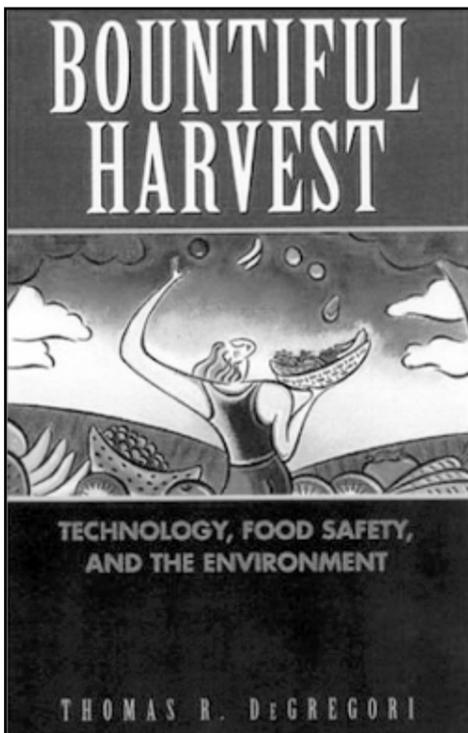
By **GEORGE C. LEEF**
Contributing Editor

WASHINGTON

As I begin this review, Earth Day has just passed. As usual, the airwaves and newspaper were filled with outlandish statements by self-proclaimed environmentalists that unless we immediately and drastically change our ways, there will be misery for all living things on Earth. Naive adults and impressionable children received an increased dose of the technophobic hysteria that is now a regular part of their lives.

Fearmongering is easy and often profitable. Debunking of the claims of fear-mongers is much more difficult and usually not so profitable. Hack writers can readily toss off books and stories proclaiming imminent disaster and find mass markets for them, while refutation of falsehood both takes longer and is harder to sell. That is why we owe a special debt to the dedicated truthseekers who work at the latter. One of them is Professor Thomas R. DeGregori, whose book *Bountiful Harvest* is a marvelous counterattack against the technophobes and environmental doomsayers.

Even while science was making possible unprecedented gains in human life spans and the comfort of living in the 20th century, noisy and ignorant opponents of progress were working to convince people that progress was actually illusory and that disaster was lurking just around the corner. As DeGregori, who teaches economics at the University of Houston, puts it, "The alleged dangers of modern life have become conventional wisdom to large seg-



ments of the population." What makes him angry is the fact that technophobic babble has harmful, even deadly consequences for people.

Food is one of the book's main topics. Well-fed Americans and Europeans don't need to worry about getting enough nutrition, but in other regions of the world, especially Africa, the struggle to get enough to eat is as acute today as it was centuries ago.

Genetic modification of crops holds the promise of making it possible to feed populations in poor areas by making plants more drought-tolerant, pest-resistant, and nutritious.

Alas, genetic modification, which DeGregori notes is simply doing precisely

what mankind has done on a hit-or-miss basis for thousands of years in breeding better crops, has come under attack by groups of Luddites who fear (or at least claim to fear) that we are somehow creating terrible "Frankenfoods."

For example, DeGregori mentions the breakthrough of using genetic modification to create rice plants that produce vitamin A, which would be a great benefit to many of the world's poor who have vitamin A-deficient diets. Unfortunately, he writes, "The potential benefit of vitamin A-enriched rice to the world's most needy people has not been sufficient to deter Greenpeace from attempting to disrupt the effort...to make it available to the farmers of Asia." He quotes the bitter words of Florence Wambugu, a distinguished scientist and director of the International Service for the Acquisition of Agri-Biotech Applications, who called opposition to gene technology a "northern luxury."

DeGregori launches an equally forceful attack on a cornerstone of green, technophobic thinking, namely the "precautionary principle." This principle says that risks are unacceptable. If an environmental or technological change could conceivably lead to any harm, then it must be opposed. In other words, humans should not act unless they have perfect foreknowledge of all possible consequences of their acts and can therefore say with certainty that there would be no adverse consequences.

DeGregori writes, "This may sound like a prudent course of action, but it would in fact hold public policy hostage to those with vivid imaginations who are most vocal in proclaiming their phobias." This so-called principle would, if taken seriously,

paralyze society and stifle progress, but it appeals to people who think in simple slogans.

While on the subject of simple slogans, how about this one: Organic is better. The organic-food movement has spread widely over the last two decades, but DeGregori is skeptical of its claims. "Organic" farming disdains the use of "synthetic" fertilizers, preferring those that are "natural."

But the author observes that "urea is urea and it is H₂N X CO X NH₂, whether in fertilizer or manure...Unfortunately, the living properties in organic agriculture may well be the greater endowment of harmful microorganisms that they contain." A high percentage of cases of e coli cases come from "organic" produce. People may get a warm feeling of togetherness with nature from eating "organic" food, but they may also get sick.

Oh, and by the way, our current infatuation with "natural" living is not particularly new. DeGregori has the bad manners to show that the Nazis also embraced that ideology, favoring vegetarianism and organic agriculture as integral parts of the "new, pure civilization that was to be Germany's future."

DeGregori's conclusion regarding the similarities between Nazism and contemporary environmentalism is a good summing up point.

He writes, "An apocalyptic view that the earth is threatened with imminent destruction absolves one from having to understand the consequences of one's actions, since the good of saving the planet cleanses any wrong that one may do in saving it." That indeed is the mindset of our technophobes and this book is a welcome rebuttal to it. cj

Book Review

Rand's *The Fountainhead*: 60 Years Later and Still Going Strong

• Ayn Rand: *The Fountainhead*; Dutton/Plume, 1994; 736 pp;

By **PAUL MESSINO**
Editorial Intern

RALEIGH

She was born Alissa Zinovievna Rosenbaum on Feb. 2, 1905 in St. Petersburg, Russia. Fleeing the effects of the Bolshevik Revolution and the ensuing Lenin regime, Alissa chose her pen name, Ayn Rand at age 21 in Chicago in 1926. In 1943, working behind the scenes in Hollywood, Rand published a few short stories building to her May 6 publication of *The Fountainhead*, her first attempt at combining the narrative power of the novel with a sophisticated philosophical outlook influenced by her exposure to early communist Russia. Sixty years later, America celebrates Rand's Objectivist philosophy that brought life to *The Fountainhead*.

The power of Rand's philosophy matures in her crowning literary achievement, *Atlas Shrugged*. This 1,000-page-plus novel was recently named the second most influential book, under the King James version of the *Bible*, by a Library of Congress national survey.

Rand's philosophy is known as Objectivism, the belief that all knowledge can be rationally apprehended through observable facts. Rand's objectivism hinges on a rational being's ability to comprehend and interact in the world by maintaining personal integrity and autonomy throughout life.

The connection between Rand's objectivist philosophy and her rhetorical skill

lies in her characters. Each character, from the heroic emblem of individualism, Howard Roark, to the despicable collectivist Ellsworth Toohey, gives life to Rand's fear that one day the American ideal — the celebration of personal autonomy — could fall to collectivism.

Rand builds her Objectivist philosophy around the novel's protagonist, Howard Roark. The reader is introduced to Roark in the 1920s attending a prominent tradition-minded architecture school. A picturesque romantic character, Roark is tall, slender, angular, and quiet. His talent is astounding but overshadowed by his more predominant characteristic, an unwavering commitment to personal integrity.

Rand's literary construction of her characters parallels Roark's anticlassical architectural principles. Roark believes that each edifice constructed must be unique, precise, and true. There is a sense of autonomy for each building. This autonomy epitomizes beauty. Roark defines beauty as that characteristic which displays a natural tendency to remain independently true to its nature. Similarly for Rand, humanity is beautiful when people live lives that promote reason and personal autonomy

at all costs, the essence of human nature.

While attending the university, Roark is surrounded by the past in all its classical glory. Everywhere around him Roark encounters sycophants to the past, embodied in his classmate — an outstanding student in the classical tradition — Peter Keating.

Classicalists and collectivists

Keating survives on the approval of those around him. His skills as an architect are limited to recreations of the past. And

his success depends upon gaining the approval of those in power, an ability Keating mastered over the course of his life.

As a foil to Roark, Keating shows that true success is achieved by a commitment to the growth of personal integrity.

"Integrity," as Roark says, "is the ability to stand by an idea," at all costs. To truly place value in human nature is to be relentless in asserting "man's right to the pursuit of

happiness. His own happiness; not anyone else's..." This is the essence of objectivism, to live life under your own choices, to be free of the burden of society and to not, because of this freedom, feel ashamed to

call yourself selfish.

If Roark is Rand's embodiment of objectivism, Ellsworth Toohey represents the antithesis, collectivism. A successful writer for the leading gossip magazine, Toohey uses his opinion column to control the opinions of the masses. Toohey's power of persuasion can only elevate him to the height of the collective mass. He is no individual; he does not possess the power to create or the autonomy to survive.

The goal of existence cannot be found in "greatness — in other's eyes. Fame admiration, envy — all that which comes from others." When others are your prime concern, you forget about the most influential person in your life, you. But, this is not to say that life is void of social roles and responsibilities, far from it. We are, of courses, social creatures. Being social creatures, however, does not mean self-sacrifice for the philanthropic preservation of others.

Society for Rand consists in independent men interacting for their own benefit. No individual has the ability to be totally self-sufficient. Sometimes we need others to complete ourselves.

Rand late in her career said in a television interview when asked whether she feared death, "I will not die, the world will merely end." This is the Objectivist mind: striving, accomplishing, and living as if the whole world was their existence. *The Fountainhead* will pull you into a world where the human mind is celebrated above all else, and it will leave you believing in the wonderful and awe-inspiring potential of the individual. cj



Author and philosopher Ayn Rand

Radical Surgery For Medical Suits

Should North Carolina reform its medical malpractice lawsuit laws? Physicians and insurers say yes, arguing that exorbitant and arbitrary awards for "pain and suffering" are driving insurance costs higher.

Nationally, from 1994 to 2000, jury awards tripled. For all but two of the last 12 years insurance claims have been greater than premiums. In 2002 insurers paid out \$1.65 for every dollar received. The higher insurance rates allegedly generated by these trends are cited as a reason why insurers have left some markets and why some doctors have left certain specialties such as obstetrics-gynecology, where awards and premiums have skyrocketed.

Based on research by the U.S. Department of Health and Human Services, the American Medical Society has categorized North Carolina as in a "state of crisis." According to HHS data, from 2001 to 2002 North Carolina had a 50 percent increase in premiums for medical specialists, the eighth-highest in the country.

According to the North Carolina Medical Society, insurance premiums for hospitals in the state have risen by more than 400 percent in three years. Last year, rates for rural hospitals rose by 180 percent.

The American Association of Neurological Surgeons has designated North Carolina as a state in "severe crisis" for neurosurgeons. A "severe crisis state" is one that has had either a "50 percent increase in premiums from 2000 to 2002, or average premiums near or over \$100,000."

In the General Assembly legislation has been proposed, the centerpiece of which is to cap pain and suffering awards, i.e. damages for psychological trauma and stress, at \$250,000.

The problem with this is that any legislatively imposed cap will necessarily be arbitrary. Ideally, pain and suffering awards should reflect actual harm, but there are no standards. Juries are often influenced by the plaintiff's personal appeal or the deep pockets of a defendant. Instead of arbitrary caps, Professors Joseph Newhouse and Paul Weiler at Harvard University argue for a damage scale "containing standardized injury profiles and specific... amounts that will govern the...juries' appraisal of particular claims." This would make awards more rigorously determined and consistent from case to case.

In addition to "pain and suffering" reform the state should consider implementing a policy of "loser pays" where a plaintiff who loses a case would pay the legal fees of the defendant. The system often favors reaching a settlement even if the defendant would be acquitted. For example, if it would cost \$75,000 to defend against a lawsuit, the defendant would settle out of court for any amount less than that. Therefore, some suits are brought even if the odds of winning in court are low. A loser-pays policy would discourage frivolous lawsuits and false accusations.

Medical malpractice reform should be a high priority, but legislation being considered focuses on cosmetic fixes and ignores root causes. A sound legal system that fairly redresses grievances is a right of both potential plaintiffs and defendants. The right reforms will ultimately lead to better health care at lower costs. *CJ*



Dr. Roy Cordato

Editorials

TALKING THE TALK But Easley incapable of walking the walk

Men use thought only as authority for their injustice, and employ speech only to conceal their thoughts.

— Voltaire (1763)

Pondering Voltaire's aphorism, politically astute North Carolinians would consider Gov. Mike Easley the perfect embodiment of hypocrisy. What you see, or in Easley's case, what you hear, is definitely not what you are likely to get.

In the modern era, though, the governor most likely could be characterized as an adherent of the crassly demagogic Bill Clinton school of thought rather than of the purely logical French philosopher's.

During the 1990s graduates of the Clinton school became master blacksmiths who pounded truth into whatever shape suited their political objectives. Easley wields the hammer in North Carolina. Sen. John Edwards carries it in Washington. Secure in office, they are liberals. Vulnerable near election time, they become "moderates."

Rhetoric aside, Easley's record as governor speaks volumes about his shell-game shenanigans. The evidence lies in a lengthy list of injustices:

- Highway Robbery. Easley has treated the Highway Trust Fund as a slush fund to buoy the General Fund and to use in ways that were not intended. His recently passed "Moving Forward" legislation will take \$700 million in bond authority approved by voters for new-highway construction and transfer it to road improvements, maintenance — and mass-transit projects. Employing a bait-and-switch tactic, Easley siphoned from the trust fund revenue that motorists paid in higher taxes on gasoline, car sales taxes, and other fees.

- Fleecing of Golden LEAF. Originally sold to the public as a benevolent and independent nonprofit dedicated to health care and antismoking programs, Golden LEAF in practice bends to the political manipulation of Easley and Senate President Pro Tem Marc Basnight. Already, the men have pressured the foundation's board to "invest" \$85.4 million for "Democratic initiatives" of biotechnological research and stimulation of the state's economy. Long term, the foundation plans to commit an additional \$108 million to biotechnology and millions of other dollars to programs outside the organization's originally stated mission.

- Tax-Hike Mike. Despite prior assurances he would not raise taxes, Easley's administration, if anything, has been punctuated by incessant tax increases. In 2001 the governor signed into law nearly \$700 million in annualized tax increases. In 2002, he proposed a \$400 million tax hike and eventually signed a \$343 million increase. And in 2003 Easley proposed \$461 million in higher state or local taxes (the latter due to imposing another hit on local government budgets). His latest plan reneged on earlier promise to let the previous income and sales tax increases expire. Easley's

budget also broke an earlier promise to give a tax break to families with children and to married couples.

- Local-Government Larceny. During the 2001-03 biennium, Easley seized hundreds of millions of dollars in tax reimbursements to localities. To help local governments patch the holes in their budgets, the General Assembly agreed to let cities and counties enact their own half-cent sales tax increases. For some localities for which the new taxes wouldn't replace the withheld revenue, the administration agreed to make up \$23 million in "hold harmless" payments. As mentioned, Easley soon reneged on that promise, too, in his 2003 budget proposal.

- Lottery Lunacy. Easley included \$250 million for a state-run "education lottery" in his 2002 budget adjustments. The problem was, no lottery existed. A back-door measure to introduce a game failed to pass legislative muster. Even so, the proceeds were not necessarily limited to new education spending, as originally promised.

- "Clean Smokestacks" Smokescreen. In 2002 Easley crowed about legislation and an agreement with power companies that required them to install updated antipollution devices on smokestacks. By using a magical accounting technique, i.e. a five-year freeze on rates, Easley said, consumers would not pay more for electricity. Missing from Easley's announcement was the fact that rates actually would have decreased without the legislation and that, according to research by the John Locke Foundation, there would be no significant environmental benefit.

- Economic Development. Ten months after taking office in 2001, Easley, apparently eager to show he had an economic development strategy, began making announcements of business openings in North Carolina. Unfortunately, most of the developments for which Easley took credit were bogus. Many of Easley's announcements came many months after the openings had occurred, and several of those arrivals were by companies that had planned to come to the state long before Easley took office.

- More at Four. Budgeted at \$6.5 million in its first year, More at Four was started as Easley's signature program in response to a court order requiring the state to offer prekindergarten to at-risk children. Warning of catastrophic results if at-risk children weren't given a head start, Easley persuaded the legislature to provide funding through two years of tough budgets.

Now the state can't find enough parents willing to enroll their children in the program. More than one-third of More at Four's \$36 million budget has gone unspent and the program is 2,200 pupils short of its 7,600 goal. Under-terred, Easley wants to expand the program to 10,000 children and the budget to \$43 million.

Starting with this year's State of the State Address, Easley appeared to be a man on a mission to get re-elected. His speech that night included moves toward the middle ground, such as his proposal to index government spending.

And for the first time, he seemed to acknowledge that spending, by the legislature — not tax cuts in the 1990s — lay at the root of the state's recent budget deficits. Whether the governor was serious, or intends to persevere after the election, remains to be seen.

With a track record like his, Easley could hardly blame voters for doubting his credibility. He certainly talks the talk, but he continually fails to walk the walk. *CJ*

ABUSING SCIENCE

Political agenda warps academic debate

Arthur Koestler, author of *Darkness at Noon* and notable post-Communist man of letters, once observed that "commitment to a scientific theory can be as charged with emotion as a religious credo." Anyone who has seen social scientists, in particular, make the case for their favorite hypothesis about this or that will recognize the wisdom in Koestler's remark.

The public policy landscape is littered with corpses of "scientific" hypotheses that manage to continue staggering around, like zombies, animated not by supporting data but by the fervent insistence of their masters that "it must be true, it just has to be."

One thinks of 100-proof Keynesian economics. In the 1930s it was revolutionary. In the 1950s it was orthodoxy. By the 1970s it was outdated inanity — among those with a willingness to examine actual data in the actual world. Of course policymakers couldn't maximize prosperity, as Keynesians had advocated, by stimulating the economy with easy money and restraining inflation with higher taxes. Inflation had to be tamed with tight money and growth-enhancing tax cuts (thus creating fewer dollars chasing more goods). Despite political huffing and puffing since the early 1980s, pretty much all political actors agree with this policy mix now, and disagree only on details (no serious Democratic presidential candidate, for example, would boost the top income tax rate back to 50 percent, the pre-1986 level, or to 70 percent, the pre-1981 level).

More recent and closer to home, our colleague Dr. Roy Cordato has pointed out that a key assumption of environmental activists about ground-level ozone — that when it spikes, people prone to asthma must suffer significantly more — sounds plausible but is not evident in the data. Cordato found in a recent study that North Carolina communities with high ozone levels actually displayed low asthma-hospitalization rates, and vice versa. Perhaps the links between ozone and asthma are so subtle that they are hard to find, but that's the funny thing about science: It's supposed to be about data, not rationalizations or wishful thinking.

"No matter what the data say"

Another classic example materialized in May. It seems that a UNC-Chapel Hill researcher, Lisa Sutherland, just completed a significant study attempting to explain why obesity rates among teen-agers have risen over the past generation. Contrary to the conventional wisdom, Sutherland found that teens had not been consuming significantly more calories. From 1980 to 2000, caloric intake went up only 1 percent. The real problem, she found, was inaction. Average physical activity dropped by 13 percent, while obesity shot up by 10 percent.

Careful readers of obesity statistics, not just of the conventional wisdom contained in the latest womens' magazine cover, would not have found Sutherland's conclusion shocking. The national debate about obesity has long been fraught with the misuse and misunderstanding of basic facts. For instance, data from the U.S. Department of Agriculture show that the average caloric intake of Americans — 2,344 a day for men, 1,638 for women — is significantly below the recommended daily intake levels for the average man (2,538) and woman (1,982). If there is a huge and growing obesity epidemic, it must be coming from our couches rather than our curly fries.

Speaking of curly fries, the reaction of the nutritionist establishment to Sutherland's paper has been telling. Many observers have dismissed the finding on calories by claiming that the survey data she used, all from familiar federal surveys, must be wrong. They offered no proof. Instead, they have started reanimating the zombie. "We are pretty sure [teens] are eating too much, no matter what the data say," said Dr. Nancy Krebs of the University of Colorado Health Sciences Center in Denver, who chairs a national pediatricians' committee on nutrition. Thank you for your candor, Madame Chairwoman.

And don't forget the political angle here. Clinical nutritionist JoAnn Hattner of Stanford University told the AP that accepting Sutherland's conclusion that food is not a big part of the problem could take pressure off food companies to cut the calories they feed the nation. "There is enough clamor throughout the country that we are getting corporations to change," Hattner said. "We need to continue that clamor."

Here's where the science disappears and the politics takes over. Think about it. If Sutherland's conclusion is

correct, then parents and teen-agers cannot blame (and, of course, sue) Big Food for their flabby fate. They would have to take responsible for their own actions — or, in this case, inactions. So the "supersize value-meal theory" of teenage obesity, whatever the lack of underlying data, must continue to shuffle and grope its spooky way across the public policy landscape.

Until the governmental busybodies and trial lawyers figure out a way to sue Big Video.

In conclusion, here's a bonus Arthur Koestler quote relevant to the discussion: "Statistics is like a bikini. What they reveal is suggestive. What they conceal is vital."

ON PARENTING

Legislators have mixed feelings on lending

A couple of years ago, it was fashionable in the North Carolina General Assembly to think so ill of payday lending that it deserved little more than a quick death. Now, according to a large majority of members of the N.C. House, it's time to bring payday lending back?

What gives?

Well, the reality is that actual North Carolinians, quite apart from their would-be protectors in political life, find the convenience of a short-term loan against their next paycheck to be worth the expense.

In the face of the state's punitive regulation, much of the payday-lending industry simply went on as before, with national quick-cash firms claiming exemption from the new rules by partnering with banks chartered in other states.

Rep. Bill Culpepper, a Chowan County Democrat, introduced a bill in the General Assembly this session to restore the ability of North Carolina companies to compete in the payday lending market. In selling the idea to the House (it passed in May on a 79-32 vote), Culpepper argued that the re-entry of local competitors to the national chains would help to drive down interest rates and improve service.

Someone's been reading his economics, lately. Who knew state legislators had the time — or inclination?

Opponents of the bill continued to argue that it would legalize a practice abusive to young and low-income workers, citing extrapolations of the annualized interest rate from some of these transactions. The numbers can be mind-boggling, with the clear implication that it is appropriate for state lawmakers to forbid such loans to protect against usurious returns.

This is paternalism, served straight up. We admit to some concern about some of these lending practices, to the extent that they employ confusing and misleading claims and contractual language to defraud desperate borrowers. The government has a legitimate role to play in ensuring that market exchanges are free of force and fraud.

But our experience is that most users of payday lending know exactly what they are doing. Lacking easy access to credit cards or a savings account, they view payday lending as an attractive way to handle cash-flow problems that would otherwise lead to checking-account fees even larger than the lending fee. No doubt a few of these borrowers overuse the service and become trapped in a cycle of debt. Most do not.

A case not just of bad legislating

Here's the dividing line between advocates of limited government and advocates of expansive government. The former think that responsible citizens in a free society can and should take responsibility for their own actions. The latter think, well, that's just too mean. They think that government-as-parent should swoop in to bail out the unwary.

The problem is, the proposed intervention — to forbid payday lending practiced deemed too disadvantageous to borrowers — isn't just bad economics or bad legislating. It's bad parenting!

Learning often comes after painful mistakes. The parent who shields children from the consequences of such mistakes inhibits their growth in knowledge and judgment. In the case of personal finances, most of us have learned what to do and what not to do by screwing up one or more times. That's just one example of how human beings thrive when they have choices. Properly understood, paternalism should embrace personal freedom and personal responsibility rather than trying to smother them.

We're not suggesting that payday borrowers are children. That's how the would-be payday prohibitionists view them — children who should never have to grow up. CJ

Chicken Littles on Welfare Are Silent

Those politicians, activists, scholars, and journalists who issued dire warnings in the 1990s about the calamitous impact of welfare reform on poor families have yet to offer a coherent explanation for how wrong they were. As many are the same who more recently predicted a "quagmire" for coalition troops in Iraq, perhaps they simply don't perceive the need to defend past predictions.

Actually, there have been some halfhearted rationalizations. Some have attempted to credit economic growth alone with the massive decrease in welfare reciprocity, and decline in overall poverty, that America has experienced in the wake of the (relatively modest, in my view) welfare reforms enacted during the past decade by a Democratic president, a Republican Congress, and many of their colleagues among the nation's governors and legislatures.

I'd say this was a good try, but it really isn't.

We've gone through many economic cycles of boom and bust. There's a lot of data, going back

decades, that allow one to test whether poverty rates and welfare dependency are simply products of general economic trends. They aren't. Welfare rolls soared even during the prosperous years of the 1960s and early 1970s. The growth spurt of the 1980s had only modest impacts on dependency.

The main factor explaining the unique trends of the 1990s, as Heritage Foundation analysts Robert Rector and Patrick Fagan demonstrated in a recent paper, is policy change. Work requirements, time limits, and other welfare reforms — even when imperfectly enforced — have changed behavior. They have led to the real work experience that, more than education or anything else, is the key to building the human capital poor people need to improve their lot.

Now there's another inconvenient fact for the welfare Chicken Littles to attempt to explain way. According to a recent *Christian Science Monitor* report, there has been a sizable decrease in the concentration of poor families in America's cities during the past decade.

During the 1990s, the *Monitor* found, the number of poor people living in high-poverty areas fell by 24 percent — or 2.5 million. Among blacks, it dropped from 30.3 percent to 18.6 percent. For Hispanics, it dropped from 21.2 percent to 13.8 percent. Among American Indians, it fell from 30.6 percent to 19.5 percent.

The overall poverty rate declined during the 1990s, from 13.1 percent to 12.4 percent. Child poverty, especially among blacks, has been falling for several years.

Another way of putting all this is that there's been a decline in housing segregation by class, and apparently, by race as well.

How come? Again, it's very difficult to attribute the trend to the general economic cycle. A likely explanation, as the article explains, is that welfare reform led to many recipients exiting poverty-stricken neighborhoods to look for jobs, in some cases leaving stagnant urban areas in the Northeast and Midwest for more promising climes.

Having found these jobs, they've been able to establish residency in more mixed neighborhoods where their children are likely to be exposed to better role models and soak up better values. Their exposure to crime has been lessened, and to better-quality schools and other public services has been enhanced.

Oh, the humanity.

CJ

Hood is president of the John Locke Foundation, publisher of *Carolina Journal*, a syndicated columnist, and host of "Carolina Journal Radio," coming soon to a radio station near you.

John Hood

Editorial Briefs

Local 'halls of fame' multiply

As if multimillion-dollar sports arenas were not enough, taxpayers in cities and towns across America are being hit up for funds to build local "halls of fame." Sponsors promise that the halls will instill civic pride, bring in tourist cash, and create jobs.

But economists warn civic boosters not to count on the promised economic and job benefits.

Some of the projects under consideration would be laughable, if they were not so wasteful and expensive, critics say. Boosters in Buffalo, N.Y., want townspeople to build a \$10 million National Comedy Hall of Fame.

A group of ukulele enthusiasts are trying to establish a Ukulele Hall of Fame — not in Hawaii, but in New England, of all places.

The millions needed to build these pop-culture palaces are just the beginning of the expenses. Revenues from admissions are necessary to keep them open and operating. But experience has shown that visitor rates tend to decline after the first several years.

That leaves critics warning promoters that: "If you build it, they'll eventually stop coming."

Reported in the *Wall Street Journal*.

GED recipients falter in college

General Equivalency Degrees help identify people without a high school degree who have the motivation and cognitive ability to pursue opportunities that require a high school education.

GED recipients, however, should not be combined with regular high school graduates in educational statistics, says Jay Greene.

"We should not suggest to people seeking the GED or their prospective employers or admissions committees that the GED is equivalent to a regular high school diploma," he says.

Although the GED gives students a chance at a post-secondary education, most GED recipients have difficulty succeeding at the next level. Almost 75 percent of GED recipients who enroll in community college fail to complete their program. About 44 percent of regular high school graduates fail in community college.

In a four-year college the prospects for GEDs are worse. Ninety-five percent of GED recipients who enroll in a four-year college fail to finish, compared to 25 percent of high school graduates.

Given that the GED process does not require a significant amount of time learning material, does not require students to be disciplined and have a strong work ethic, and does not demand high academic achievement, we should not expect to find that receiving a GED, on its own, makes a big difference in the life-outcomes of its recipients, Greene says.

Researched by Jay Green, "The GED Myth," Spring/Summer 2002, *Texas Education Review*.

Steel tariffs damage the economy

A little over a year ago, President Bush made a serious mistake by imposing tariffs on imported steel. As a result, many other industries were forced to sacrifice far more than steel producers made.

The higher steel prices resulting from import restrictions have encouraged producers to expand even though world steel capacity is far greater than needed. In short, tariffs have done more to prevent restructuring than bring it about, which has affected the whole economy.

In February, the Consuming Industries Trade Action Coalition, a business group, published a study showing that about 200,000 jobs were lost among steel users, while there are only 187,000 total people employed in the steel industry.

Sixteen states lost at least 4,500 jobs, including California (19,392), Texas (15,826), Ohio (10,553), and Michigan (9,829).

The motor vehicle industry lost \$7.6 billion, industrial machinery lost \$2.5 billion, and the fabricated metal products industry saw profits fall from \$9 billion in 2001 to \$5.8 billion last year.

Reported by the National Center for Policy Analysis. CJ

North Carolina's Spending Soared in 1990s

By MICHAEL L. WALDEN

Contributing Editor

How did North Carolina get into such budget problems" is a frequent question asked among public-policy thinkers and regular citizens during the past couple of years. Although many factors contributed, clearly an important one is that North Carolina spent an increasing share of its income on government functions in the 1990s, and when the economic slowdown and recession came in 2000-2002, the high level of spending could not be sustained.

Here are the details. North Carolina's economy experienced tremendous growth in the 1990s. After the recession in the early part of the decade, total income in the state (so-called "gross state product") grew by a whopping 63 percent, or 42 percent after inflation. This works out to be a 5 percent annual growth rate in inflation-adjusted income, truly a remarkable performance.

Certainly the larger economy of North Carolina could support more government spending. In fact, we would expect government spending to rise with economic growth, as a larger economy requires more highways, more police officers, more school buildings and teachers, etc.

A generous measure of government spending relative to the size of the economy is government spending divided by gross state product. Again, gross state product is simply the dollar value of all income produced in the state in a given time period, such as a year. Dividing government spending by nominal (unadjusted for inflation) gross state product will allow government spending to rise with inflation and with increases in the standard of living (termed real economic growth).

At the beginning of the economic expansion of the 1990s, in fiscal 1992-93, total state and local government spending in North Carolina, exclusive of federal government grants and aid, was 11.5 percent of gross state product. By the end of the decade (fiscal 1999-2000) it had climbed to 12 percent of gross state product.

"Big deal," you might say, government's take of the private economy in North Carolina increased by one-half of 1 percent during the boom years of the 1990s. This sounds like peanuts, or to keep the analogy in monetary terms, cents.

But hold on to your chair. If state and local government spending in North Carolina had been kept at 11.5 percent of gross state product in 1999-2000, rather than the actual 12 percent, governmental spending would have been \$1.3 billion lower! Clearly, such a lower rate of spending would have allowed governments in North Carolina to avoid a large part, if not all, of their budgetary problems during the past three years.

We can be more specific and pinpoint what kinds of government spending most increased their share of the state economy during the 1990s. Here's how this is done.

First, I calculated the percentage of gross state product spent on various governmental categories (education, welfare, transportation, etc.) in fiscal 1992-93. I then applied

RALEIGH

these percentages for the governmental spending categories to gross state product in fiscal 1999-2000. The results were governmental spending in 1999-2000 if each category's relative share of gross state product remained at 1992-93 levels. I then compared these spending amounts to the actual spending amounts in 1999-2000.

The results were very informative, and a bit surprising. Education, transportation, government administration, and debt interest each had actual spending in 1999-2000 that was less than the spending they would have had if their share, or percentage, of gross state product remained at 1992-93 levels. Transportation was the biggest loser, spending \$187 million less, followed by government administration at \$110 million less, education at \$96 million less, and debt interest at \$2 million less.

Conversely, the "winners," with actual 1999-2000 spending greater than the spending they would have had if their share of gross state product had remained at 1992-93 levels, were health care and welfare (plus \$1.4 billion), environmental spending (plus \$265 million), and public safety (plus \$52 million).

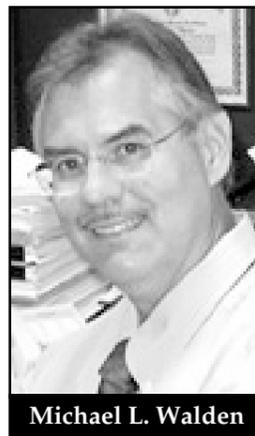
One use of these results is to pinpoint segments of government spending in North Carolina that have grown substantially faster than the overall economy. Some of this additional

spending may have been by design. For example, the increased environmental and public-safety spending is probably a reflection of increased citizen concerns in these two areas.

The results clearly show that any effort to restrain the growth in state spending must address spending in health care and welfare. Spending in this category increased more than 40 percent faster than growth in the economy during the 1990s. Efforts to introduce automatic incentives for users to spend health care and welfare resources more frugally would be a good starting point.

Conversely, the finding that the share of the economy devoted to transportation spending fell in the 1990s is at least one explanation for the apparent increase in frustration with traffic congestion in the state. A larger economy creates more road travel, and the simple fact is that North Carolina's spending on transportation has not kept pace with economic growth.

Certainly this analysis is not the final word on governmental budgeting and spending in North Carolina. Some will argue that today's modern, complex economy requires a higher percentage of income be devoted to government as the economy grows, while others will argue just the opposite. However, step one in analyzing any issue is establishing the facts. The simple fact is that the share of North Carolina's economy devoted to government increased in the 1990s. But equally important, there was also significant redistribution in the allocation of those resources across government functions during the decade. CJ



Michael L. Walden

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*Issue of in-state tuition resurfaces***A Dream for Illegal Immigrants Becomes a Nightmare for Taxpayers**

By RICHARD WAGNER

Editor

Add to the files of bad ideas that refuse to die the "Dream Act" and other similar measures that would allow illegal immigrants to enjoy our nation's privileges without earning them, as American citizens have.

The Development, Relief, and Education for Alien Minors Act has a noble purpose. It would enable, among other things, the children of illegal immigrants to pay in-state tuition at colleges and allow them to apply for financial assistance. The basic qualifications, also, seem reasonable. Ostensibly, anyone who has lived in the United States for five years, earned a high school diploma or GED, and possesses good moral character deserves a break.

The problem is "a break" doesn't necessarily equate with privilege, right, or justice, as some liberal activists claim. In this instance, justice would be in the form of yet another subsidy paid by taxpayers, who foot the bill for the lion's share of a public-college education.

Let's set aside for now addressing the insult that Americans should be expected to provide more assistance to an illegal group of people whom taxpayers already have been subsidizing heavily for years. We've been educating their children, providing them with health care, and suffering the injustices and associated costs wrought by the hardened criminals among them.

AFL-CIO's illogical argument

Proponents of the legislation, such as the AFL-CIO, say the United States "has a regrettable history of barring access to higher education for reasons of race and national origin." They compare the plight of today's immigrants with that of young blacks who were denied admission into

RALEIGH



Richard Wagner

many American universities "when segregation was the law of the land" and young Japanese-Americans who were imprisoned with their families during World War II and denied access to college. Certainly, those were grave injustices, and America today lives with the guilt of the policies of yesterday.

Unfortunately for the AFL-CIO, its comparison is illogical. The injustices of yesteryear were suffered by American citizens — c-i-t-i-z-e-n-s — not i-l-l-e-g-a-l immigrants. Proponents of "social justice" programs frequently and conveniently forget to make that huge distinction.

The same movement has found its way into North Carolina. A controversial bill filed by former Sen. William "Bill" Martin, D-Greensboro, last year also would have granted reduced tuition for illegal immigrants, whose numbers in the state swelled from about 100,000 in 1990 to more than 400,000 in 2000. The legislation, which died in committee, would have further widened the floodgates of state spending and exacerbated North Carolina's budget deficit by hundreds of millions of dollars over a few years.

Reeves introduces N.C. bill

Another measure, introduced this year in the General Assembly by Sen. Eric Reeves, D-Wake, and co-sponsors Sens. Tom Apodaca, R-Hendersonville; Fletcher Hartsell, Jr., R-Concord; and Jeanne Lucas, D-Durham, apparently tries to succeed where Martin's failed. Reeves, though, is taking a lower-profile approach. His bill, consisting of one paragraph, would amend the General Statutes to include the same benefits and qualifications as the Dream Act. "Notwithstanding other provisions of this section, an individual who has attended school in North Carolina for at least four consecutive years and has received a high school diploma from a school within North Carolina or has ob-

tained a general education diploma (GED) issued in North Carolina shall be accorded resident tuition status," the legislation says. The bill currently lies in the Senate Education/Higher Education Committee.

Reeves's use of the term "individual" rather than "citizen" or "resident" and the questionable need for the bill are tip-offs to whom would benefit from the state's generosity: illegal immigrants.

Again, Martin's and Reeves's intentions, at first glance, appear to be compassionate. But are they compassionate to taxpayers, whose children must sacrifice while the children of illegal immigrants prosper?

Costly services provided for illegals

Many similar ideas are finagling their way into law and onto the backs of taxpayers with greater frequency every year. They provide ample testament to the kind of social welfare programs that continue to drive state government's budget deficits.

North Carolina's outlay, and that of other states, for government services provided to illegal immigrants already has reached staggering levels. Sen. Fern Shubert, R-Union, who has introduced a bill that would halt the issuance of driver's licenses to illegal immigrants, estimates that these services cost North Carolina's taxpayers about \$1 billion a year. Most of the expenses are incurred in the state's over-extended criminal justice, health-care, and education systems.

Rather than aiding and abetting criminal behavior with measures such as the Dream Act, federal and state officials should pursue avenues that encourage legal immigration.

The United States could do that by increasing the quotas of immigrants it allows into the country and by vigorously enforcing its immigration laws.

Those positive moves alone would turn violators into law-abiding, taxpaying citizens who could fully share and appreciate the benefits and burdens of a democratic government like the rest of us.

CJ

Letters to the editor: criticism of ADHD story; usurping Yanceyville

To the Editor,

As a researcher who has dedicated the past 30 years of my career to better understanding of Attention-Deficit/Hyperactivity Disorder (ADHD) and its treatments, I was dismayed to read your March 3 article "Grave New World: Relying on Ritalin." ADHD is a valid medical condition supported by a substantial body of research. In her article, Karen Welsh failed to report on any legitimate studies demonstrating the profound impact ADHD can have on an individual or the significant body of research supporting appropriate treatment. Instead, Welsh's article included the views of a handful of individuals who contend that ADHD does not exist and that its treatments are overprescribed. This can be contrasted against the International Consensus Statement on ADHD published in 2001 (*Child Clinical and Family Psychology Review*), signed by more than 85 of the world's leading scientists studying childhood disorders, and supported by more than 700 scientific references. Noteworthy is that none of the so-called experts interviewed by Ms. Welsh have published any scientific research on ADHD and possess no recognizable scientific standing in this field. They were obviously chosen merely and exclusively for their opinions against this disorder and its treatment.

Such reports like those of Ms. Welsh give the public the impression that there is cause for concern over prescription of ADHD treatments. The idea that medicating those afflicted is questionable if not reprehensible, and that any behavior problems associated with ADHD are merely the result of problems in the home, excessive viewing of TV or playing of video games, diet, lack of love and attention, or teacher/school intolerance is wholly unscientific and contradicts decades of research demonstrating the significant impairment caused by ADHD and the safety and efficacy of available medical treatments.

There is no doubt that ADHD leads to impairments in major life activities, including social relations, education, family functioning, occupational functioning, self-sufficiency, and adherence to social rules, norms, and laws. For those it afflicts, ADHD can cause devastating problems. Studies suggest that sufferers are far more likely than

people who do not have ADHD to drop out of school, to have few or no friends, to underperform at work, to engage in antisocial activities, and to use tobacco or illicit drugs more than normal. Children growing up with ADHD are more likely to experience teen pregnancy and sexually transmitted diseases, to speed excessively and have multiple car accidents, and in hundreds of other ways mismanage and endanger their lives.

Studies have consistently shown that treatment can lessen the severity of these problems and enable patients to live up to their potential and lead fulfilling lives. Yet despite these serious consequences, and despite charges of overprescription of Ritalin alleged in Welsh's article, studies indicate that less than half of those with the disorder are receiving treatment.

ADHD should be depicted in the media as realistically and accurately as it is depicted in science — as a valid disorder having varied and substantial adverse impact on those who may suffer from it through no fault of their own or their parents and teachers, and one for which effective treatments are available, and should be administered without criticism.

Russell Barkley, Ph.D.

Professor

Medical University of South Carolina

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Caswell County a victim of 'piracy?'

To the editor,

The power and authority of every county commission in North Carolina will be diminished by the conspired attempt by Roxboro-Person County to use Yanceyville as an agent to circumvent the Caswell County Board of Commissioners' authority vested in them by N.C. General Statute 153A-15 if it is allowed to proceed. If this, out of "county piracy," is accomplished, the precedent that it will establish will allow any convenient "corporate crossroad" to be used by out-of-county authorities to override the county's Board of Commissioners in respect to properties in their home county.

North Carolina General Statute 153A-15 requires that consent of the Board of County Commissioners, before land in their county can be condemned, or purchased by a unit of local government outside the county. There is no provision in this law for a corporate community within the county (Yanceyville) to act in lieu of the Board of County Commissioners, or to acquire property to facilitate outside authorities to act against the express authority of the county board. The Yanceyville Town Council, not elected by voters throughout Caswell County, cannot accept any authority on citizens of the county beyond the town corporate limits of Yanceyville.

According to Gordon Bendall's editorial in the April 23 *The Caswell Messenger*, the Town of Yanceyville has filed "deeds" to two tracts of land in Caswell County on the Dan River. One supposedly a willful sale and the other supposedly "condemned." There are a number of things wrong with this:

(1) The record shows that they are attempting to acquire these properties on behalf of Roxboro-Person County in a conspired effort to circumvent the intent of N.C.S.G 153A-15 and nullify and block the authority of the Caswell County Board of Commissioners. Clearly what is going on here is far bigger than water from the Dan River. It concerns every county commission and citizen in North Carolina. Are N.C. county commissions to remain relevant and to what degree? Will the Caswell County Board of Commissioners fight it? All they need is backbone. Their legal position appears excellent.

Bendall, in his editorial, indicates that the Town of Yanceyville has purchased the Jane Thomas property and condemned the David Barker property. Thus they would like everyone to believe that it is a done deal. How can you condemn property without legal notice and court approved appraisals? This appears to be more of the misinformation from the Dan River Water Pirates.

The ball is in the Caswell County Board of Commissioners' court. Will they file an injunction to stop the Caswell County voters from being fleeced, or will they do nothing and watch it happen?

Frank B. Turberville, Jr.

Milton, N.C.

The Scourge of Fat-Finger Dialing Afflicts N.C.

Where's big brother when we need him to protect us from predatory telecommunications companies?

By PAUL CHESSER
Associate Editor

North Carolina, the state that bore the brunt of the Big Tobacco lawsuit, will soon face another challenge that could cause it disproportionate harm. Widely reported lawsuits against America's largest fast-food chains may be on hold, but the dastardly restaurants have helped spawn a surprise epidemic: "fat-finger dialing."

Those predatory companies

The federal government recently became aware of the problem, in which predatory telecommunications companies set up multiple phone numbers resembling popular services like 1-800-CALL-ATT. ASC Telecom Inc., a Spring Corp. subsidiary, and One Call Communications Inc. benefit from dialers' oversized digits when the victims press a wrong-numbered button (called "miss-mashing" in the Tar Heel state), causing an accidental call to numbers like 1-800-CELL-ATT, or other mistaken variations.

Unintentional calls go to the non-AT&T companies, which offer long-distance service like the telecom giant, but charge much higher rates than AT&T without the dialers' knowledge.

AT&T filed a complaint in U.S. District Court in New York asking that the court force Sprint, ASC, and One Call to relinquish numbers similar to 1-800-CALL-ATT and pay unspecified damages for business under false pretenses.

"Consumers who inadvertently dial one of the defendants' numbers have been deceived into using defendants' services, causing AT&T to lose business which was intended for it," the complaint says, according to a report in the *Washington Times*.

Unfair to North Carolina

Like the tobacco case, this scam could harm residents of North Carolina more than those in most other states. Why? Because we are among the states with the highest rates of obesity. We rank in the bottom quarter, meaning we have a plus-size percentage of plump pointers per capita.

Only politicians can fix this inequity.

First, the state Department of Justice should address the problem with a public-service advertising onslaught. Remember when Gov. Mike Easley was attorney general in the late 1990s? He spent thousands of dollars warning blacks about the dangers of predatory lending scams. The slick ads, prominently promoting Easley's efforts in the fraud fight, ran in minority-targeted print and broadcast media throughout the state. The campaign was credited with helping him win black voter support in his successful run for governor.

A similar campaign by current Attorney General (and likely future gubernatorial candidate) Roy Cooper, cautioning potential victims about fat-finger dialing, is in order. But where should he direct the ads? No obesity-oriented publications or broadcasters exist in the state, to my knowledge. *cj*



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