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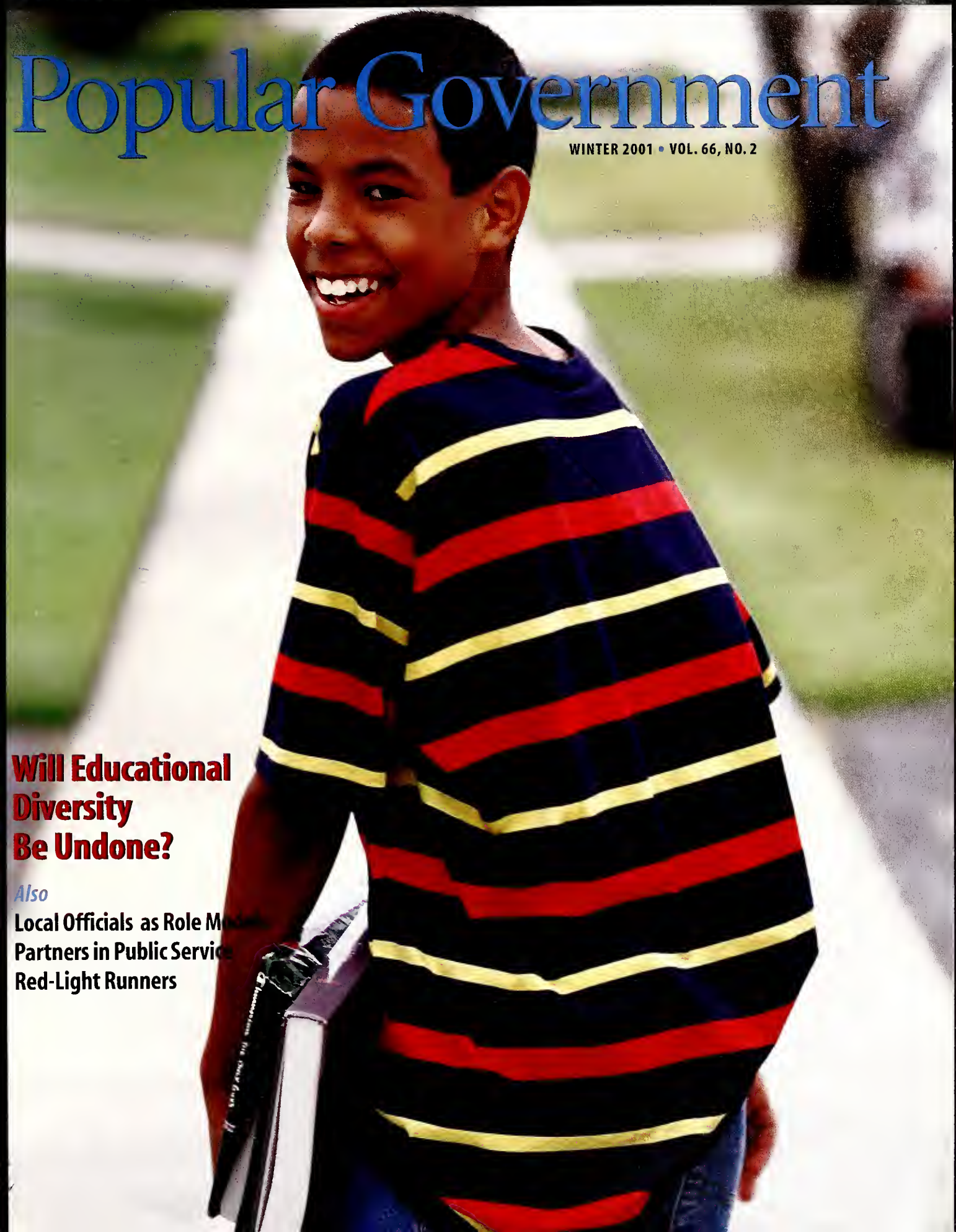

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Popular Government

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Popular Government

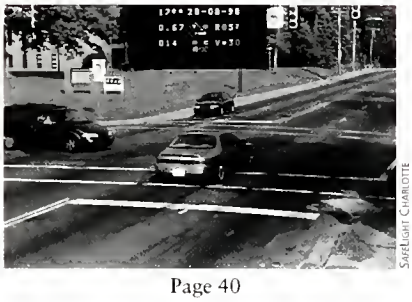
WINTER 2001 • VOLUME 66, NUMBER 2

Page 2

Page 17

DURHAM HABITAT FOR HUMANITY

Page 25



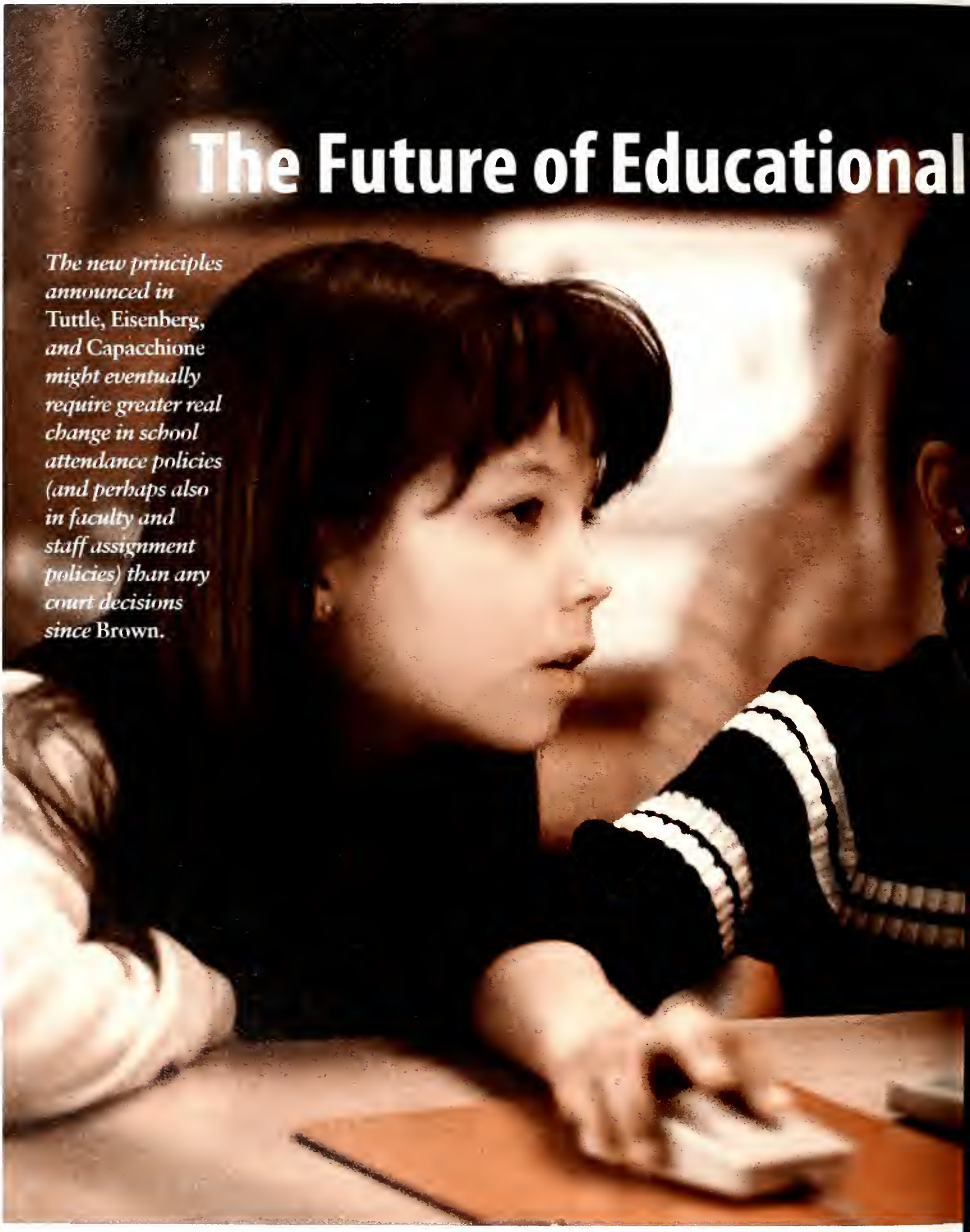
SAFELIGHT CHARLOTTE

Page 40

ON THE COVER

The Future of Educational

The new principles announced in Tuttle, Eisenberg, *and* Capacchione *might eventually require greater real change in school attendance policies (and perhaps also in faculty and staff assignment policies) than any court decisions since* Brown.



COVER ARTICLE

Old Decrees, New Challenges

John Charles Boger and Elizabeth Jean Bower

Today, more than at any time since 1954, North Carolina school boards face a legal challenge to the tools of desegregation, a challenge with the potential to undo much of the educational diversity that has been achieved since *Brown v. Board of Education*.[1] The new challenge has found its first decisive judicial expression in three recent federal decisions, two of them rendered by the U.S. Court of Appeals for the Fourth Circuit and the third by a federal district court sitting in Charlotte: *Tuttle v. Arlington County School Board*,[2] *Eisenberg v. Montgomery County Public Schools*,[3] and *Capacchione v. Charlotte-Mecklenburg Schools*.[4] Together these decisions suggest important new constitutional do's and don'ts for local school boards. The requirements depart sharply from the rules laid down during the *Brown* era, adherence to which now seems to be second nature for administrators, teachers, students, and parents in public schools throughout North Carolina and the nation.

In essence the new decisions forbid all school boards (unless they are operating under federal desegregation decrees) from considering race or ethnicity as they assign children to public schools. The prohibition holds even if it leads to resegregated schools, even if most parents desire their children to attend racially diverse schools, and even if school boards are acting in good faith to ensure that students receive the educational benefits that may come from a diverse school environment.

The future of the new principles announced in *Tuttle*, *Eisenberg*, and *Capacchione* remains uncertain. To date, the Supreme Court has not agreed to consider them. However, they might eventually require greater real change in school attendance policies (and perhaps also in faculty and staff assignment policies) than any court decisions since *Brown*. Moreover, the Fourth Circuit Court decisions set forth constitutional rules that purport to bind every school district within the circuit, which includes Maryland, North Carolina, South Carolina, Virginia, and West Virginia. So North Carolinians cannot ignore them. Instead, every state and local school board and every interested parent must give them close attention.

Understanding this potential change requires that interested citizens and public school officials review the constitutional landscape of school assignment policies. This article undertakes that review. First, it looks at the legal requirements created by *Brown* and two important cases that followed it—*Green v. County School Board of New Kent County*[5] in 1968 and *Swann v. Charlotte-Mecklenburg Board of Education*[6] in 1971. Together the three cases clarified the specific obligations resting on all school systems found to have engaged in formal racial segregation. Next, the article examines three Supreme Court cases from the early 1990s that offer important new guidance on when and how school districts under court order can gain release from further judicial oversight.

Boger is a professor in the UNC–CH School of Law specializing in civil rights, education law, and constitutional law. Bower is a third-year student at the UNC–CH School of Law. Contact them at jcboger@email.unc.edu and ebower@email.unc.edu.

The article then reviews the basics of another body of law on the Equal Protection Clause that has emerged in response to the debate over affirmative action in government contracting, public employment, and college admissions. It explores how the Fourth Circuit Court in *Tuttle* and *Eisenberg* has applied that body of law in a new context—the assignment of children to elementary and secondary public schools. Finally, because *Tuttle* and *Eisenberg* constitute the law that now applies to school districts in the Fourth Circuit, the last two portions of the article assess the legal choices still open to school boards and parents in North Carolina and describe some innovative steps being taken in Wake County.

Desegregation: 1954 to 1990

In May 1954 the U.S. Supreme Court declared in *Brown* that the South's traditional "dual system" of public education was inconsistent with the Equal Protection Clause of the Fourteenth Amendment.[7] *Brown* directly challenged the fundamental policy reflected in public school segregation—the assignment of black and white children to different schools.

After *Brown*, many Southern school boards initially chose to ignore or defy the Court and the Constitution, invoking principles of state sovereignty and longstanding racial traditions. After years of stubborn resistance in some districts and grudging acquiescence in others,[8] most school districts eventually began to implement school desegregation in earnest. Widespread change did not begin, however, until 1965, when Congress first conditioned eligibility for its massive education spending program under the Elementary and Secondary Education Act on compliance with the antidiscrimination provisions of the Civil Rights Act of 1964.[9]

Even after desegregation began in earnest, protracted legal challenges continued in the 1960s and 1970s as federal courts struggled to resolve many legal and educational debates over the meaning of *Brown*'s central insight that "[s]eparate educational facilities are inherently unequal." Not until 1968, in the watershed case of *Green*, did the Supreme Court finally outline the changes that would be necessary in every formerly segregated school system. Every such system, it announced, bore an "affirmative duty" to "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." The *Green* Court specified at least six areas in which federal courts should measure progress toward a "unitary" (desegregated) school system: (1) student enrollments, (2) faculty assignments, (3) administrative and staff assignments, (4) transportation to schools, (5) extracurricular activities, and (6) physical facilities.[10]

The prohibition holds even if it leads to resegregated schools, even if most parents desire their children to attend racially diverse schools, and even if school boards are acting in good faith.

The *Green* Court rejected the school district's argument that it had complied with its desegregation obligations when, in 1965, it adopted a "freedom of choice" approach that permitted all parents—black or white—to choose the public school their children would attend. Offering school choice, the Court held, did not suffice in the New Kent County school district because that plan had not worked in practice to achieve measurable student desegregation.[11] *Green* made unmistakably clear that the Fourteenth Amendment requires tangible results—real racial integration—not merely compliance with formal color-blind procedures.

In 1971 the Supreme Court again turned to the issue of school desegregation in *Swann*, a famous decision involving the Charlotte-Mecklenburg school district. Speaking for all nine justices, Chief Justice Warren Burger held that federal courts were fully authorized to require a variety of tools to achieve school desegregation, including (1) express racial percentages as initial targets in assigning students to desegregating schools; (2) express racial ratios of faculty and staff; (3) administrative "pairing" and "clustering" of two or more geographically distant residential areas to create racially diverse student assignment zones; and (4) use of cross-town busing or other transportation remedies, if necessary. The Court acknowledged that school boards would need to consider students' races expressly as they assigned students to schools in order to achieve meaningful desegregation.[12]

In a companion case decided the same day as *Swann*, the Court condemned a North Carolina state statute that forbade assignment of children by race, local school board plans relying on racial balances or ratios, and use of involuntary busing.[13] Again writing for a unanimous Court, Chief Justice Burger rebuffed North Carolina's argument that the Constitution required color-blind student assignments and forbade any use of racial balancing in public education. He described race-conscious student assignments as an essential tool to fulfill "the promise of *Brown*":

> *Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems.*[14]

During the twenty years that followed, *Green* and *Swann* provided the basic guidelines for southern school desegregation.

Some North Carolina school districts did not wait to be sued. Clearly seeing the handwriting on the wall, they submitted official forms devised by the federal Department of Health, Education, and Welfare (HEW), declaring themselves to be fully desegregated. In 1967 the civil rights functions of HEW were consolidated under the Office for Civil Rights (OCR). Using more specific guidelines and armed with greater personnel, OCR moved beyond reliance on school board assurances and began to

COURTESY OF THE N.C. DIVISION OF ARCHIVES AND HISTORY

Following the historic Brown *decision in 1954, supporters gathered at St. Joseph's AME Church in Durham.*

perform actual reviews of school compliance. OCR combined this approach with negotiations with the local school districts. HEW gradually began to move away from the pre–1964 focus of "shooting for court cases" and worked more cooperatively with local districts to achieve compliance. Although exact numbers are difficult to obtain, this comprehensive, cooperative approach resulted in stronger ties with local officials and, together with the strong Supreme Court statements in *Green* and *Swann*, turned most districts toward compliance in a spirit of cooperation.[15]

Desegregation in the 1990s

In the early 1990s, after nearly two decades of silence, the Supreme Court returned to the issue of southern school desegregation. By then, the principal question was no longer, What must school boards lawfully do to desegregate? but How long should judicial supervision of school boards last? and When and by what standards should a federal court determine that a school district has completed its remedial tasks and become, not a dual system, but a unitary system at last? The Court's first important decision on these questions came in 1991 in *Board of Education of Oklahoma City v. Dowell*. From the outset, sharp differences from earlier decisions were evident in *Dowell*'s tone and emphasis. No longer unanimous—indeed, sharply divided in a 5-to-3 opinion written by Chief Justice William Rehnquist—the Court stressed that federal supervision of local school systems had been intended only as "a temporary measure to remedy past discrimination" and that "important values" are served by "local control of public school systems."[16] Although the Court eventually sent *Dowell* back to the lower courts for further consideration, most court watchers read the case as a signal that the era of court-ordered desegregation decrees might be drawing to a close.

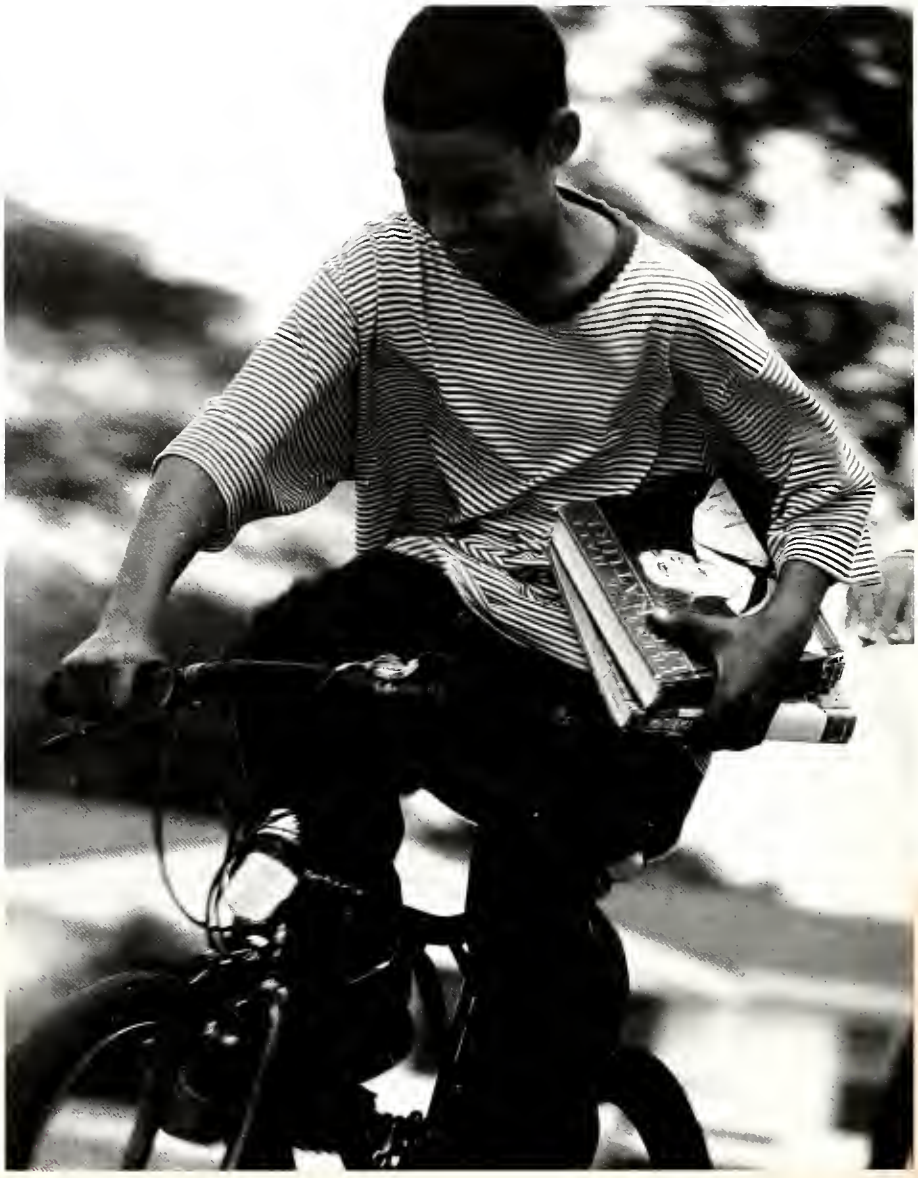
The next year the Court reinforced that impression in *Freeman v. Pitts*, a case arising in the suburban Atlanta district of DeKalb County. The school board in *Freeman* sought a declaration that it had overcome its racial duality between 1979 and 1992 and now was unitary. Such a declaration would permit the district's release from further judicial supervision. Measuring the district against the six *Green* factors, the Supreme Court held, for the first time, that a federal court might properly release a school system from judicial supervision one factor at a time. To merit such an outcome, a school board must demonstrate that it has sufficiently overcome racial problems in that one area—such as student assignments or extracurricular activities—even if racial disparities remain in another area—such as faculty assignments.[17]

The *Freeman* Court also held that, if a school district has diligently followed a court's student assignment orders for a significant period, a court might withdraw further judicial supervision—*even if* schools' racial populations have subsequently become imbalanced—as long as the emerging racial imbalance can plausibly be traced not to the school board but to other causes, such as residential decisions made by parents themselves.[18]

To aid lower federal courts in determining when they should declare a school district to be unitary and withdraw judicial supervision, the *Freeman* Court directed them to weigh three new factors:

> *[1] whether there has been full and satisfactory compliance with the [desegregation] decree in those aspects of the system where supervision is to be withdrawn; [2] whether retention of judicial controls is necessary or practicable to achieve compliance with the decree in other facets of the school system [e.g., other* Green *factors still under court supervision]; and [3] whether the school district has demonstrated . . . its good-faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.*[19]

Read broadly, each of these factors



Tuttle, Eisenberg, and *Capacchione*: Constitutionally Sound?

The Fourth Circuit Court of Appeals in *Tuttle v. Arlington County School Board* and *Eisenberg v. Montgomery County Public Schools*, and the Charlotte-Mecklenburg district court in *Capacchione v. Charlotte-Mecklenburg Schools,* interpreted the U.S. Supreme Court's prior cases to forbid school districts from considering race when they assign students to public schools. This conclusion seems constitutionally doubtful for four reasons.[1]

First, although the Fourth Circuit Court in both *Tuttle* and *Eisenberg* acknowledged that the Supreme Court's prior cases appeared to leave open the question of whether "educational diversity" might be a "compelling government interest"—and therefore the Fourth Circuit Court assumed that it was—the district court held that it was not.[2] To this extent the district court has gone beyond the Fourth Circuit Court's opinions, and its decision may well be reversed on that ground alone.

Second, in most of the cases cited by the Fourth Circuit Court, the compelling government interest at stake was remedial—for example, to compensate for a government's prior discriminatory exclusion of willing African-American job applicants or contractors from any consideration as teachers or government contractors, respectively. Understandably, when the objective is to compensate victims of prior discrimination, federal courts are vigilant to ensure that relief not be extended to minority group members who themselves were never victimized, especially at the cost of disadvantaging other, nonminority competitors for the same scarce resources.

Yet educational diversity is another *kind* of compelling interest with a different objective. A school board uses race in making assignments, not to achieve a remedial goal but to advance present and future educational ends by creating a racially diverse learning climate that will benefit *all* children. In a world growing more racially and ethnically interdependent every year, reasonable educators could surely conclude that every child has a compelling interest to learn about people of other racial backgrounds. Such educational judgments are strongly confirmed by a host of social science studies on the educational desirability of integrated schooling.[3] In dismissing a school board's race-conscious assignment policies, in reliance on cases that arose in a remedial context, the Fourth Circuit Court failed to take school districts' unique goals seriously.

subtly shifted primary judicial attention from a practical concern about concrete consequences of school board actions—whether black and white children, teachers, and staff were actually attending school together—toward a technical concern about formal compliance with court decrees. *Freeman* also reinforced the theme of local control and the temporary nature of court supervision that had been voiced in *Dowell*. The "end purpose" of federal desegregation litigation, the Court emphasized, must be "to remedy the violation *and, in addition, to restore state and local authorities to the control of a school system*," in order to restore the "vital national tradition" of local school board autonomy.[20]

In 1995 in *Missouri v. Jenkins (III)*, the Court expanded on its new criteria for assessing unitary status when it reviewed the progress of the Kansas City, Missouri, school district toward unitary status.[21] *Jenkins III* stressed that courts did not need to require the elimination of racial disparities—for example, in test scores—unless the plaintiffs could trace those disparities directly to prior segregation, and that school districts had no affirmative duty to implement educational policies merely to encourage white suburban children to return to urban school districts.

Together, *Dowell*, *Freeman*, and *Jenkins III* have invited the round of unitary status litigation that is currently under way throughout the nation, offering school districts the prospect of a more successful trip to the federal courthouse for release from judicial supervision.

Affirmative Action Principles Applied to Desegregation

The Strict-Scrutiny Test

In the late 1970s, the Supreme Court began to consider race in a very different context from school desegregation. State legislatures, public employers, and others had started creating voluntary programs of affirmative action to extend some limited preferences to African-Americans (or other traditionally disadvantaged groups) as compensation for prior decades of wholesale discrimination. Eventually, unhappy whites raised legal challenges to these programs, which were targeted at admission to public colleges and universities,[22] public employment,[23] and public contracting.[24]

The Supreme Court was initially uncertain about how to address the new racial preferences because, unlike traditional discriminatory legislation, they apparently were intended not to punish or subordinate disfavored racial groups but to compensate group members for the legal and economic exclusion that they had endured under slavery and Jim Crow segregation. Nonetheless, in *City of Richmond v. J. A. Croson Co.*, a watershed case decided in 1989, a majority of five justices reasoned that *all* state or local policies that employed race-conscious classifications should be subjected to "strict judicial scrutiny." Under strict scrutiny, as Justice Sandra Day O'Connor clarified it, federal courts should examine and invalidate any race-conscious categories or factors, whether motivated by racial hostility or goodwill, *unless* the

Third, as the accompanying article explains, most of the cases relied on by the Fourth Circuit Court arose in a special context, the awarding of a scarce governmental resource to one of several rival claimants of different races—whether that resource was a construction contract *(City of Richmond v. J. A. Croson Co.; Adarand Constructors v. Pena)*, a governmental franchise *(Metro Broadcasting v. FCC)*, a seat in a professional school *(Regents of the University of California v. Bakke)*, or a seat in a competitive-exam high school *(Wessmann v. Gittens)*.[4] When a state bestows such a benefit, its action may be unfair if decisions purportedly based on worth or merit—lowest bidder, best qualified or most competitive applicant—instead tip toward a less competitive or less qualified claimant solely because of his or her race or ethnicity.

But seats in a public school are common goods, not scarce public resources. Every child is sent to school; no child is denied. Of course, every public school has its distinguishing characteristics: history, identifying architectural features, special programs, and principal and corps of teachers, each with particular talents and personalities. Yet no parent or child has a right to attend a particular public school. For legal purposes, all public schools are equivalent and interchangeable. To that extent the law normally recognizes no winners and losers. The analogy to the "I-win/you-lose" world of government contracting or admission to public higher education is inapplicable.[5] Hence there is less need for concern about creating unintended victims from such racial preferences.

Moreover, because the goal is educational diversity, these preferences do not uniformly favor blacks or whites, Latinos or Anglos. Instead, they work in *both* directions to ensure that every school has a healthy racial and ethnic mix of students. Some white students may be denied transfers to a school whose population is tilting strongly toward whites. Some black students may simultaneously be denied transfers to a school in which blacks already are overrepresented. Such choices, unlike those in admissions, employment, or contracting, contain no implicit messages about the inherent merit, value, or achievement of any racial or ethnic group.

Finally, the Fourth Circuit Court seems to have ignored or overlooked a substantial body of prior holdings and comments by the U.S. Supreme Court or individual justices on this very issue. In *Swann v. Charlotte-Mecklenburg Board of Education*, the Court sharply distinguished between the *limited* authority of federal courts to adopt race-conscious schooling policies as a remedy for constitutional violations and the *broad* discretion granted to local school boards to take similar actions for valid educational reasons. Chief Justice Warren Burger wrote as follows:

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. *To do this as an educational policy is within the broad discretionary powers of school authorities;* absent a finding of a constitutional violation, however, that would not be within the authority of a federal court.[6]

state or local agency could demonstrate that the racial categories (1) would promote "compelling government interests" and (2) were "narrowly tailored" (carefully drawn) to achieve their compelling ends without causing undue racial injury to innocent victims.[25] This twofold constitutional test has since been widely employed to scrutinize race-conscious preferences that appear in a variety of state and federal statures.[26]

Extension of *Croson*'s Strict Scrutiny to Student Assignment to Schools

In both of the Fourth Circuit Court's recent opinions, white parents challenged school board decisions that depended in part on considerations of race or ethnicity. In Arlington County, Virginia, the school board designated one of its public kindergartens as a "magnet" school, a school to which students were permitted to apply for admission. There were more applicants than available spaces, so the school district instituted a lottery system. To ensure educational and racial diversity, however, the district structured the lottery to give special weight to children from lower-income backgrounds, children whose native language was not English, and children with racial or ethnic minority backgrounds.[27] Parents of Grace Tuttle and other white children who applied for, but were not accepted into, the kindergarten class, brought suit, relying on the logic of the affirmative action cases to argue that the school district's use of racial considerations violated the Equal Protection Clause.

In the second Fourth Circuit case, the parents of Jacob Eisenberg challenged the student transfer policy of Montgomery County, Maryland. In reviewing students' requests for transfer from one school to another, Montgomery school officials considered the race of the students as well as the racial composition of the potential sending and receiving schools, to ensure that the transfers would not upset the overall racial makeup of schools within the district. The Eisenbergs sued, alleging that their child would have been transferred to a math and science magnet school but for his race.[28]

In both *Tuttle* and *Eisenberg*, the school districts responded that affording children a racially diverse educational experience was itself a sufficiently compelling goal to meet the standards of strict scrutiny. Therefore, educational diversity should justify the use of race in making student assignments.[29] In the absence of definitive guidance by the Supreme Court, the judicial panels in both cases assumed that a school district's interest in educational diversity might well be compelling.[30] However, when they turned to the second branch of the strict-scrutiny test—whether the means chosen by the school board were narrowly tailored to minimize racial harm—they condemned the actions of the Arlington and Montgomery County school boards as not narrowly tailored enough, and they strongly suggested that any school district plan that employs "racial balancing" is *per se* impermissible.[31]

The Fourth Circuit Court has recently considered another appeal on these issues, brought by civil rights plaintiffs and the

Subsequently (in 1978), as noted in the accompanying article, William Rehnquist, then an associate justice, expressed his view that the Constitution would clearly permit Los Angeles County to implement a voluntary, race-conscious school assignment plan.[7] Later, in the Denver desegregation case, Justice Lewis F. Powell, Jr., wrote that school boards "of course [are] free to develop and initiate further plans to promote school desegregation," beyond those constitutionally required by *Brown*, especially in America's "pluralistic society," where schools might wish to teach "students of all races [to] learn to play, work, and cooperate with one another."[8]

Although both the language and the logic of these prior cases addressed the very matter at issue in *Tuttle*, *Eisenberg*, and *Capacchione*, neither the Fourth Circuit Court nor the district court discussed any of them in striking down all future race-conscious student assignments.[9]

—John Charles Boger and Elizabeth Jean Bower

For the notes to this sidebar, see page 16.

CARRBORO ELEMENTARY / PHOTO BY JONATHAN PARKINSON

A collage of the face masks created by children at Carrboro (N.C.) Elementary School conveys the school's racial and ethnic diversity.

Charlotte-Mecklenburg school board itself. They have challenged the September 1999 decision rendered by a federal district court in *Capacchione* (1) declaring that the Charlotte-Mecklenburg school district had achieved unitary status, (2) dismissing the district's thirty-five-year desegregation lawsuit, (3) lifting all court orders requiring desegregation, and (4) imposing a new order forbidding all further use of race or ethnicity as factors in admitting children to the district's magnet schools.[32]

The Charlotte-Mecklenburg school board and the original *Swann* attorneys argued that the district court was wrong on all counts: (1) significant vestiges of Charlotte-Mecklenburg's prior segregation remained to be corrected, and therefore a unitary status finding was inappropriate; and (2) even if Charlotte-Mecklenburg had become a unitary system, it might lawfully consider race in making student assignments to achieve educational diversity and avoid resegregation of its schools.

A three-judge panel of the Fourth Circuit Court, by a 2-1 vote, agreed with the *Swann* plaintiffs that the Charlotte-Mecklenburg schools had not yet been proven unitary in several respects, including student assignment, school facilities, transportation policies, and student achievement. The case has therefore been remanded to the district court for further consideration.[33]

Tuttle and *Eisenberg* in the Year 2000

Although serious questions exist about the legal soundness of *Tuttle* and *Eisenberg* (see the sidebar on page 6), the Fourth Circuit Court has spoken in the two cases. Unless and until the Supreme Court agrees to resolve this issue, the cases supply binding legal precedent for every school district in North Carolina and neighboring states. The practical question, then, is, What latitude do the cases afford North Carolina school districts in making future student assignments?

Every school district must begin by considering its legal status. If it is currently subject to an active desegregation order, then not only *Green* and *Swann* but the specific terms of court orders in its own case still provide the controlling legal authority for the district. Such school boards may continue—indeed, they must continue—whatever race-conscious remedies have been prescribed by earlier federal decrees until their school districts have been declared unitary and released from federal supervision. Nothing in *Tuttle* and *Eisenberg* holds to the contrary. Nor has the Supreme Court ever suggested that the school districts themselves are under any constitutional obligation to seek release from existing court orders.

The Fourth Circuit Court's new decisions have their greatest immediate significance for school districts that either were never subject to a desegregation decree or now are considered unitary and released from federal judicial supervision. At a minimum, *Tuttle* and *Eisenberg* forbid these districts from using race or ethnicity when they assign students to magnet schools or evaluate student transfer requests. Yet the logic of these cases may prohibit a student asignment plan of *any* sort that might directly employ racial or ethnic considerations.

Many questions remain unresolved by the Fourth Circuit Court's recent decisions. Do these cases forbid all majority-to-minority (M-to-M) transfer programs, under which school boards honor voluntary requests if the students seek to transfer to a school in which their race is in the minority? M-to-M programs differ from the Montgomery County program in that they don't specify any concrete racial or ethnic goals or quotas. They thereby avoid the racial balancing that *Tuttle* and *Eisenberg* treated as almost unconstitutional *per se*. Yet such policies do discourage increases in the relative size of any racial group once it

exceeds 50 percent of the school's population, and they operate by sorting transfer applicants according to race. M-to-M programs probably will have a difficult time surviving *Tuttle* and *Eisenberg*.

Another unresolved question is whether these cases forbid any consideration of race or ethnicity when school boards draw or redraw their school attendance boundaries. While forbidding school boards to use express racial classifications in making individual student assignments, *Tuttle* cited with favor three school zoning measures identified by an Arlington schools study commission that might well produce greater racial diversity: (1) The board would assign a small geographic area to a home school and fill the remaining spaces in that school "by means of an unweighted random lottery from a . . . geographic area [that] would presumably be selected so that its residents would positively effect [sic] the diversity of the school." (2) The board would put the names of every child in the school district into a lottery, randomly select a certain number, and offer those randomly selected the opportunity to enter a second lottery comprising those who would like to attend a particular magnet school. (3) "Each neighborhood school . . . [would receive] a certain number of slots at each alternative [magnet] school."[34]

Both the first and the third of these alternatives rest on the unexamined (yet surely accurate) assumption that different racial and ethnic groups typically live in separate neighborhoods. The panel's approving citation of these alternative measures suggests that a high degree of race-conscious behavior in developing neighborhood feeder patterns for elementary and secondary schools may be acceptable, as long as the formal criteria finally adopted are racially neutral.[35] This distinction between direct and racially explicit plans, on the one hand, and indirect but racially conscious plans, on the other hand, seems consistent with constitutional principles currently emerging in the voting rights/redistricting area. The Supreme Court has recently acknowledged that "a legislature may be conscious of the voters' races [when it engages in redistricting] without using race as a basis for assigning voters to districts," as long as race does not become the "dominant and controlling consideration."[36]

In sum, school boards desiring to retain some degree of racial diversity probably may do so (1) if they avoid for-

mal criteria that expressly look to race or ethnicity (such as racial goals or quotas for individual schools) and (2) if they avoid actual practices in which race becomes "the dominant and controlling consideration" in making student assignments. Yet it seems implausible to imagine the current Fourth Circuit Court approving aggressive pairing and clustering approaches such as those upheld in *Swann* in 1971—joining two or more geographically noncontiguous and racially diverse neighborhoods to create a single attendance zone—if the *only* explanation for the selection of those neighborhoods is their racial composition.[37]

Beyond student assignment policies, *Tuttle* and *Eisenberg* have grave implications for other administrative practices common in many North Carolina school districts. Some districts expressly consider race or ethnicity in assigning teachers or administrative personnel to various schools; they may well see future challenges to those practices. The Fourth Circuit Court's constitutional rationale appears broad enough to throw into question all assignment policies for faculty, administrators, or other school personnel that expressly rely on racial considerations. Indeed, in the related area of teacher *dismissal* policies, both the Supreme Court and other circuits have disapproved of layoff procedures employing racial considerations.[38] Further, at least in terms of layoffs, the Supreme Court has rejected the argument that the need of schoolchildren for teacher role models of different racial backgrounds is sufficient to withstand strict scrutiny.[39]

The Wake County Experiment

In light of *Tuttle* and *Eisenberg*, Wake County has chosen to discard all reliance on race as a factor in making its student assignments, while actively seeking student diversity through consideration of both family socioeconomic status and student academic performance. Wake County's previous use of magnet programs and racial guidelines enabled it to achieve extensive desegregation; according to a recent study, only 21 percent of Wake County's black students, far less than the national average of 70 percent, were in schools with a total minority enrollment above 50 percent.[40]

Under the new Wake County plan, the district is committed to having no school in which (1) more than 40 percent of the children are eligible for free or reduced-price school lunches (such eligibility being a widely employed indicator of lower family income) or (2) more than 25 percent of the students score below grade level (averaged over two years).[41] The plan does not assign children on the basis of their individual circumstances. Instead, if a school's population exceeds the socioeconomic or achievement ceiling set by the board, children living in neighborhoods where a disproportionate percentage are either low-performing or of low socioeconomic status will be moved to other schools.

North Carolinians must await the inevitable moment when the Supreme Court decides whether the Fourth Circuit Court's commitment to an abstract form of color-blindness will prevail or whether school boards in the Fourth Circuit again will be allowed to consider race and ethnic background in making student assignments to achieve educational diversity.

Although some of the same children targeted under a race-conscious plan (many of them African-American) will be transferred under this new, race-neutral plan (because they are from lower-income families and/or have low test scores), the two approaches are not equivalent. Indeed, the new approach will affect different groups of both white and minority students:

> *About 38 percent of Wake's minority students will no longer be automatically targeted for integration. . . . And about 13 percent of the district's white students . . . will be among those who could be reassigned to help the schools meet their new, colorblind definition of diversity.*[42]

The continuing partial overlap is understandable, for African-American families have disproportionately lower incomes than white families do, not only in North Carolina but in the nation as a whole.[43] Moreover, on average, African-American children lag behind white children in performance on standardized tests, again, not only in North Carolina but in the nation as a whole.[44]

Is Wake County's new plan lawful? Can it survive constitutional challenge? Reflection on three subquestions points to the same conclusion: yes.

1. Why should Wake County's reliance on socioeconomic status or student achievement have any better success in withstanding Equal Protection Clause review than race did under the plans in Tuttle *and* Eisenberg*?*

The Supreme Court long ago reserved the exacting form of strict scrutiny employed by the Fourth Circuit Court in *Tuttle* and *Eisenberg* for statutes that draw distinctions based on race, ethnicity, or national origin, and for those that "substantially burden" a small category of so-called fundamental rights. The Court has specifically held that education is *not* one of those fundamental rights and that statutes making distinctions based on wealth or poverty (such as the socioeconomic factor adopted by Wake County) should *not* receive strict judicial review.[45] Indeed, most other legislative choices are reviewed under the "rational basis" test, a standard so remarkably lenient that literally only a handful of plaintiffs have ever succeeded in having statutes invalidated as unconstitutional.[46]

Both of Wake County's chosen factors are designed to encourage educational diversity—surely a legitimate end, since the Fourth Circuit Court assumed it to be "compelling" in *Tuttle* and *Eisenberg*—and to improve children's academic performance. Moreover, the two factors chosen by the school board to attain these important ends are closely and substantially related to those ends.

A consistent body of empirical research has proven that students in "high poverty" schools (those with very high percentages of children from low-income families) tend to perform at lower academic levels—irrespective of their own family's economic circumstances—than children in "low poverty" schools do.[47] Wake County's new attention to the socioeconomic composition of its schools therefore should not only increase the diversity of its schools' student bodies but also eliminate all high-poverty schools in Wake County and thereby improve the average educational performance of children in formerly high-poverty schools.

The other educational strategy adopted by the Wake County school board—not permitting a concentration of low-performing students in any schools—will tend to ensure that all schools have a majority of high-achieving students and that neither teachers nor parents nor other students will be inclined to flee from particular schools because of the students' disappointing performance on state standardized tests. These are manifestly reasonable means to achieve worthy and important educational ends.

2. Isn't this plan merely a subterfuge? Hasn't Wake County kept its racial assignment system under another name?

The question is an important one, for the Supreme Court has long held that even if a statute or an administrative practice *appears* to be racially neutral on its face, it still may violate the Equal Protection Clause if it was adopted, or is administered, with a racial motivation.[48] Yet even if the impact of a statute falls more heavily on one race than on another, the federal courts will not invalidate the statute on Equal Protection Clause grounds as long as it is not motivated (solely or principally) by racial considerations. The Wake County plan, as noted earlier, has strong nonracial justifications in addition to the legitimate interest in racial diversity. The plan should improve academic performance, avoid the concentration of either poorly performing or economically needy children in a few disfavored schools, and increase the overall diversity of every school. Other school districts that wish to follow the Wake County approach should likewise be sure to establish a clear record—in their school board debates, in their written policies, and in their administration of those policies—substantiating these other, nonracial goals.

3. What about the North Carolina Constitution? Didn't the North Carolina Supreme Court recently hold in Leandro v. State[49] *that every student has the state constitutional right to a "sound basic education"? Isn't that right violated by the Wake County plan?*

North Carolina schoolchildren do indeed have a newly minted "fundamental right" to a sound basic education. Yet in *Leandro* itself, the North Carolina Supreme Court declined to extend the weapon of strict judicial scrutiny to every plaintiff unhappy about some local educational decision. Instead, it instructed state courts to afford "every reasonable deference" to local educational officials and to strike a statute or a policy only if a plaintiff could make "a clear showing" that he or she was being deprived of a sound basic education.[50] Plausible social science evidence suggests that Wake County's student assignment plan will improve the quality of education that many students receive. Moreover, as already explained, students have no general right to insist on attendance at any particular school or to challenge the assignments made by local school authorities.[51]

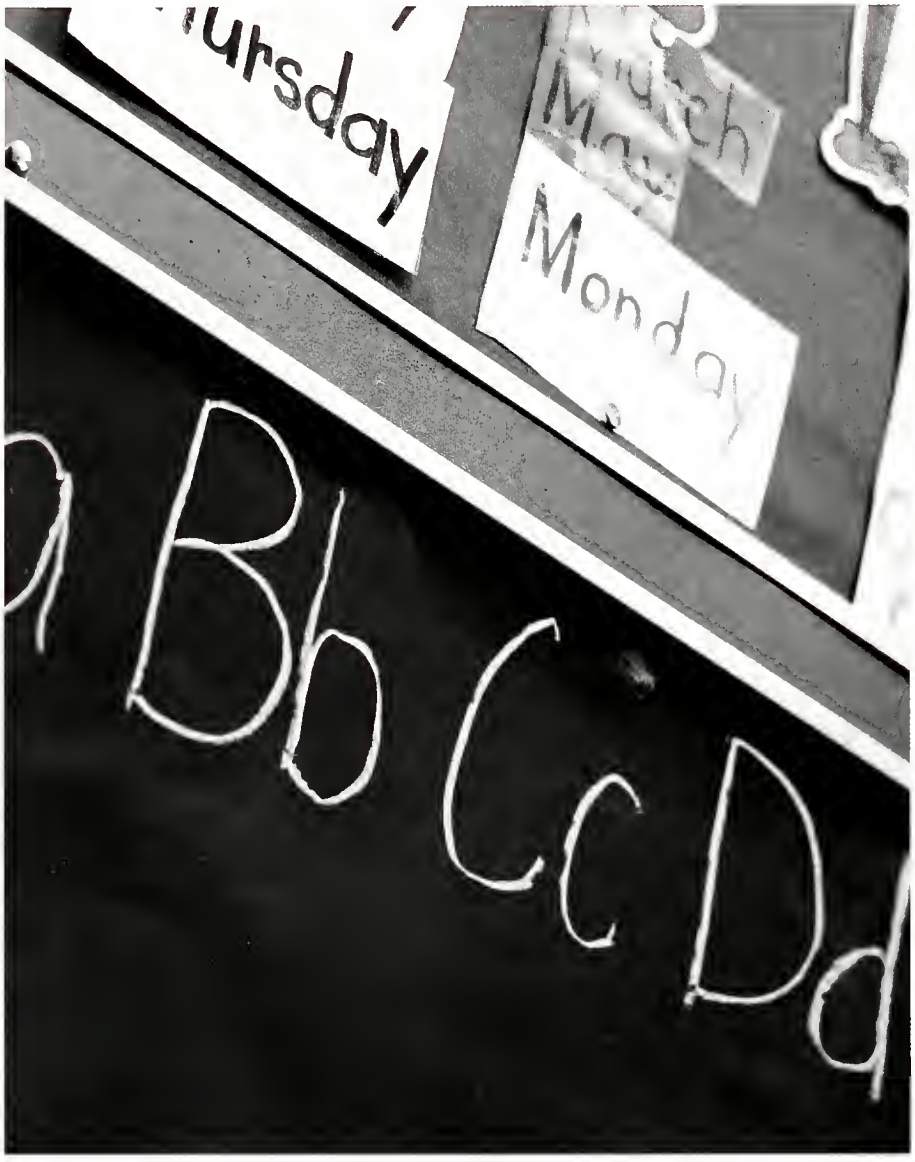
The Uncertain Future of Student Assignments

Although the Wake County approach seems legally sound, its political and educational future remains open. In March 2000 the PTA co-presidents at one Wake County elementary school wrote all parents, urging them to oppose the proposed transfer of sixty-eight low-income and low-performing students to their school from another neighborhood. All but one of the transferring students would be African-American. One co-president, a white, insisted, "I'm not a racist. . . . I'm trying to protect my neighborhood school." The letter informed parents that there never had been a need for a Title I Basic Skills reading program at their school, though the new students would likely need those services. The white co-president added, "[I]f the school's test scores drop [because of the transferring students], neighborhood parents would flee" and neighborhood property values might drop. The controversy prompted by the letters has apparently led many parents of the transferring children to approach the local chapter of the National Association for the Advancement of Colored People, seeking to forestall the move on the ground that the children should not be placed in a school where they are not welcome.[52]

Meanwhile, a countywide Gallup poll revealed that a sizable minority of Wake County residents, 35.5 percent, want to limit the number of low-performing children being moved and 24.5 percent favor limiting the number of low-income students. Yet a majority support the new plan. Indeed, the principal of the elementary school at issue in the letter described earlier has met with the parents of children who will be transferring, stating, "They will be treated fairly. They will be loved like every other child who goes [here]."[53]

Obviously one key to success will be strong, wise educational leadership. Despite the potential for parental fears and protectiveness, the new plan aims to prevent the emergence of "winner" and "loser" schools. As long as each school contains a relatively similar mix of high-, middle-, and low-income children, as well as children performing at all academic levels, no parent anywhere in the system need conclude that his or her child is being singled out for disadvantage.

Although Wake County is a pioneer in North Carolina, it is not the first school district nationally to adopt or consider such an approach. Apparently the first plan was adopted in 1992 in La Crosse, Wisconsin, a city of 50,000. The school board there set out to end the wide disparities in concentrations of poverty, ranging from 4 percent in some schools to 68 percent in others. The district's plan set a 45 percent ceiling and a 15 percent floor on the proportion of low-income children in any school. As in Wake County, the socioeconomic status of families in La Crosse was closely related to racial and ethnic background, although the predominant racial minority was not African-Americans (who



accounted for only 1 or 2 percent of La Crosse's population) but Hmong refugees from Southeast Asia (who made up about 12 percent of the district's population).[54] Although the La Crosse plan has become an accepted feature of the school system and remains in place in 2000, four school board members lost their positions when voters in the early years voted against them and even organized a recall election because of anger at their support for the plan.[55]

Similar proposals have occasionally been considered in other cities, but none have yet been adopted. For example, in 1998 a task force of teachers in Louisville, Kentucky, proposed a student assignment plan that would have considered socioeconomic status and other characteristics of individual children that put them at risk for failure. The task force's proposal was not approved by the school board, however.[56] In the late 1990s, San Francisco's school board fashioned a plan that would have weighed students' socioeconomic status, test scores, English-language ability, and racial or ethnic background in making assignments. However, in December 1999, in a ruling similar to *Tuttle* and *Eisenberg*, a federal judge held that the school board could not consider children's race and ethnicity. The school board abandoned the entire plan rather than proceed in reliance only on students' socioeconomic backgrounds and prior achievement.[57]

Conclusion

Very few North Carolinians would willingly return to the pre–1954 era of legally segregated schooling. Yet the Fourth Circuit Court has deprived local school boards of the most straightforward and direct means of ensuring that every child learns about children of other racial and ethnic backgrounds as an indispensable part of his or her socialization in public schools. North Carolinians must await the inevitable moment when the Supreme Court decides whether the Fourth Circuit Court's commitment to an abstract form of color-blindness will prevail or whether school boards in the Fourth Circuit again will be allowed to consider race and ethnic background in making student assignments to achieve educational diversity. In the meantime the experiment under way in Wake County may point toward a new and educationally superior means of achieving similar educational goals.

Notes

1. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

2. Tuttle v. Arlington County School Bd., 195 F.3d 698 (4th Cir. 1999), *cert. dismissed*, 120 S. Ct. 1552 (2000).

3. Eisenberg v. Montgomery County Public Schools, 197 F.3d 123 (4th Cir. 1999).

4. Capacchione v. Charlotte-Mecklenburg Schools, 57 F. Supp. 2d 228 (W.D.N.C. 1999), *reversed sub nom.* Belk v. Charlotte-Mecklenburg Bd. of Educ., No. 99-2389, U.S. App. LEXIS 30144 (4th Cir. Nov. 30, 2000).

5. Green v. County School Bd. of New Kent County, 391 U.S. 430 (1968).

6. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971).

7. The Equal Protection Clause reads, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

8. *See* C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW 154–68 (3d rev. ed., New York: Oxford Univ. Press, 1974) (recounting the post–1954 campaign of state resistance to school desegregation, especially in Virginia and the Deep South); WILLIAM H. CHAFEE, CIVILITIES AND CIVIL RIGHTS: GREENSBORO, NORTH CAROLINA AND THE BLACK STRUGGLE FOR FREEDOM 48–70 (paperback ed., New York: Oxford Univ. Press, 1981) (describing North Carolina's development and implementation of the Pearsall Plan, which was designed to obstruct and delay school desegregation).

9. The Civil Rights Act of 1964, Title VI, 42 U.S.C. §§ 2000d, 2000d.1. to 2000d.4 (1994). Before congressional enactment of Title VI, which denies federal funds to any state or local authorities that discriminate on the basis of race, only 2.25 percent of all African-American schoolchildren in the South

were actually attending desegregated schools. James R. Dunn, *Title VI, the Guidelines and School Desegregation in the South*, 53 VIRGINIA LAW REVIEW 42, 44, n.9 (1967). *See also* Gary Orfield, *Turning Back to Segregation*, in DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* (Gary Orfield & Susan E. Eaton eds., New York: New Press, 1996).

10. *Green*, 391 U.S. at 437–38, 435.

11. "'Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, [freedom of choice] is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to create a 'unitary, non-racial system.'" *Green*, 391 U.S. at 440, *quoting* Bowman v. County School Bd., 382 F.2d 326, 333 (4th Cir. 1967) (Sobeloff, J., concurring).

12. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 22–31, 25 (1971).

13. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43, 45 (1971), referring to former N.C. GEN. STAT. § 115-176.1 (Supp. 1969).

14. *North Carolina State Bd.*, 402 U.S. at 46.

15. *See generally* BERYL RADIN, IMPLEMENTATION, CHANGE, AND THE FEDERAL BUREAUCRACY (New York: Teachers College Press, 1977); U.S. COMM'N ON CIVIL RIGHTS, HEW AND TITLE VI (Washington, D.C.: U.S. Gov't Printing Office, 1970).

16. Board of Educ. of Oklahoma City v. Dowell, 498 U.S. 237, 247–48 (1991).

17. Freeman v. Pitts, 503 U.S. 467, 489–91 (1992).

18. *Freeman*, 503 U.S. at 494–95. The Court reasoned that "[w]here resegregation is a product not of state action [by the school board or another governmental actor] but of private choices [by parents and other individuals], it does not have constitutional implications. It is beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts. . . . Residential housing choices, and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies." *Freeman*, 503 U.S. at 495.

19. *Freeman*, 503 U.S. at 491.

20. *Freeman*, 503 U.S. at 489–90 (emphasis added).

21. Missouri v. Jenkins (III), 515 U.S. 70 (1995). The opinion is called *Jenkins III* because the Supreme Court had twice before considered other aspects of the Kansas City desegregation case.

22. *See* DeFunis v. Odegaard, 430 U.S. 144 (1977) (dismissing without deciding a challenge brought by an unsuccessful white applicant to the University of Washington Law School); Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) (invalidating a rigid set-aside of 16 places among 100 exclusively for minority candidates seeking admission to a state medical school).

23. *See* Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986) (invalidating a racial preference that protected minority teachers—who had been hired under a voluntary affirmative action program—from layoffs during a budgetary crunch); United States v. Paradise, 480 U.S. 149 (1987) (upholding a court order that required the Alabama Department of Public Safety to promote qualified black candidates for 50 percent of future promotions, because of the long history of racial discrimination in the department).

24. *See* Fullilove v. Klutznick, 448 U.S. 448 (1980) (upholding a congressional statute that required governmental recipients of federal public works funds to spend at least 10 percent of the funds for goods or services provided by qualified minority business enterprises).

25. City of Richmond v. J. A. Croson Co., 488 U.S. 469, 493–94 (1989).

26. *See*, *e.g.*, Adarand Constructors v. Pena, 515 U.S. 200 (1995) (extending the rationale of *Croson* beyond the state or local context to reach federal programs).

27. Tuttle v. Arlington County School Bd., 195 F.3d 698, 701 (4th Cir. 1999).

28. Eisenberg v. Montgomery County Public Schools, 197 F.3d 123, 125–27 (4th Cir. 1999).

29. For an excellent discussion of the arguments in support of this view, *see* Note, *The Constitutionality of Race-Conscious Admissions Programs in Public Elementary and Secondary Schools*, 112 HARVARD LAW REVIEW 940, 948–55 (1999).

30. See *Tuttle*, 195 F.3d at 704; *Eisenberg*, 197 F.3d at 130. Although the Supreme Court itself has never decided the question, in the celebrated *Bakke* case in 1977, five justices who passed on medical school admission policies at the University of California at Davis—although disagreeing sharply on many other aspects of that case—did concur that the "attainment of a diverse student body . . . clearly is a constitutionally permissible goal for an institution of higher education." Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 311–12, 314 (1978) (Powell, J., concurring in part and dissenting in part).

31. *Tuttle*, 195 F.3d at 707; *Eisenberg*, 197 F.3d at 131–32.

32. Capacchione v. Charlotte-Mecklenburg Schools, 57 F. Supp. 2d 228, 232 (W.D.N.C. 1999).

33. Belk v. Charlotte-Mecklenburg Bd. of Educ., No. 99-2389, 2000 U.S. App. LEXIS 30144 (4th Cir. Nov. 30, 2000). However, there is a significant possibility that all the judges of the Fourth Circuit Court will agree to rehear this case. Belk v. Charlotte-Mecklenburg Bd. of Educ., 211 F.3d 853 (4th Cir. 2000) (revealing that the Fourth Circuit Court was sharply divided on whether to hear the appeal initially en banc—that is, as a full court).

34. *Tuttle*, 195 F.3d at 706, n.11, *quoting* the Arlington County commission's report.

35. School boards may risk a constitutional violation, however, if they make it clear that their sole underlying *intent* or *purpose* is to achieve, indirectly, the racial balancing that the Fourth Circuit Court has condemned as a direct means of furthering educational diversity. The Supreme Court has long held that even if states' or localities' statutes or policies are racially neutral on their face, they violate the Equal Protection Clause if they were adopted or are administered with the intent to discriminate invidiously. *See*, *e.g.*, Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976); Yick Wo v. Hopkins, 118 U.S. 356 (1886). Yet, to a considerable extent, the rationale of *Tuttle* and *Eisenberg* is internally inconsistent. If a school board's goal to achieve educational diversity is constitutionally permissible, indeed even compelling for purposes of strict scrutiny (as both *Tuttle* and *Eisenberg* assume), then why is selecting race-conscious methods of student assignment to achieve this compelling end unconstitutional?

36. Shaw v. Hunt, 517 U.S. 899, 905 (1996).

37. The permissibility of considering race in drawing school attendance zones is currently the object of litigation in Boston's Children First v. Boston School Comm., 62 F. Supp. 2d 2247 (D. Mass. 1999) (denying plaintiffs' motion for a preliminary injunction against the Boston School Committee's use of race in creating school attendance zones, reasoning that the record was insufficient to determine whether plaintiffs were likely to prevail on the merits); *Boston's Children First*, 98 F. Supp. 2d 111 (D. Mass. 2000) (denying defendant school committee's motion to dismiss).

38. *See* Taxman v. Board of Educ. of Piscataway, 91 F.3d 1547 (3rd Cir. 1996) (en banc) (holding that a school district violated Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination, when it used race as a factor in choosing which of two qualified teachers it would lay off during a budgetary crisis, and suggesting that, had the court decided the question under the Equal Protection Clause, rather than Title VII, it nonetheless would not have sanctioned the school district's use of racial distinctions). *See also* Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986) (holding that a school board policy of protecting minority teachers with less seniority than some white teachers from being laid off during a budgetary crisis, because of their race, violated the Equal Protection Clause).

39. *Wygant*, 476 U.S. at 275 ("the role model theory . . . has no logical stopping point") (Powell, J.).

40. For a more comprehensive examination of the Wake County plan, *see* Elizabeth Jean Bower, *Answering the Call: Wake County's Commitment to Diversity in Education*, 78 NORTH CAROLINA LAW REVIEW 2026, 2026 (2000); *see also* Todd Silberman, *Schools Facing Diversity Dilemma*, RALEIGH NEWS & OBSERVER, Dec. 26, 1999, at 1A; Tim Simmons, *School Plan Signals New Chapter in Integration*, RALEIGH NEWS & OBSERVER, Jan. 16, 2000, at 1A.

41. *See* WAKE COUNTY PUBLIC SCHOOL SYSTEM, STUDENT ASSIGNMENT § 6200 D, E, available at http://www.wcpss.net/policy_files/policy_pdfs/6000_series.pdf (visited July 31, 2000). The pertinent provisions of the student assignment plan read as follows:

All of the following factors, not in priority order, will be used in the development of the annual student assignment plan:

A. Instructional program; e.g., magnet programs, special education, ESL, etc.
B. Adherence to K–5, 6–8, 9–12 grade organization.
C. Facility utilization, including crowding (projected enrollment should be between 85% and 115% of approved campus capacity). New schools may operate with less than 85% of capacity enrolled if some grade levels will not be assigned during the first year or if significant growth is anticipated in the following years.
D. Diversity in student achievement (percentage of students scoring below grade level should be no higher than 25%, averaged across a two-year period). Schools with more than 25% of students below grade level will receive an instructional review to ascertain the reasons for the low achievement; improvement trends will be considered in deciding whether to address this issue in development of the assignment plan.
E. Diversity in socioeconomic status (percentage of students eligible for free or reduced price lunch will be no higher than 40%). Schools with more than 40% of students eligible for free or reduced price lunch will receive an instructional review; improvement trends will be considered in deciding whether to address this issue in development of the assignment plan.
F. Stability (the percentage of students who will remain at the same school).
G. Proximity (no student will travel more than the maximum time established by board policy).

42. Simmons, *School Plan Signals*, at 1A.

43. CENTER ON BUDGET & POLICY PRIORITIES, POVERTY & INCOME TRENDS: 1998, at 12–15 (Washington, D.C.: the Center, Mar. 2000) (showing that, since at least 1970, African-American and Hispanic families have experienced poverty at far higher rates than white families have).

44. *See* NORTH CAROLINA JUSTICE & COMMUNITY DEVELOPMENT CENTER, EXPOSING THE GAP: WHY MINORITY STUDENTS ARE BEING LEFT BEHIND IN NORTH CAROLINA'S EDUCATIONAL SYSTEM 26, 4 (Raleigh, N.C.: the Center, Jan. 2000) (revealing an average gap of 30.9 points between African-American and white students in grades 3–8 in 1998–99 on state end-of-grade tests in reading and in mathematics; and a statewide average overall gap in both reading and mathematics of 30.7 points—79.2 for whites and 48.5 for African-Americans). *See generally* THE BLACK-WHITE TEST SCORE GAP (Christopher Jencks & Meredith Phillips eds., Washington, D.C.: Brookings Inst. Press, 1998) (analyzing the origins of, the historical extent of, alternative explanations for, and the policies that might overcome, the racial achievement-score gap).

45. *See* San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 29 (1973) (holding that legislative classifications based on wealth or poverty that create disparities in education do not normally invoke strict judicial scrutiny under the Equal Protection Clause); Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 458 (1988) (noting that the Court has "previously rejected the suggestion that statutes having different effects on the wealthy and the poor should on that account alone be subjected to strict equal protection scrutiny" and that the Court had never "accepted the proposition that education is a 'fundamental right' . . . which should trigger strict scrutiny").

46. Under the rational-basis review, a state need show only that its underlying goal is at least "legitimate" and that its chosen means might "conceivably" further the end. As Justice O'Connor rephrased the standard, "Social and economic legislation . . . 'carries with it a presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality.'" *Kadrmas*, 487 U.S. at 462, *quoting* Hodel v. Indiana, 452 U.S. 314, 331–32 (1981). *See generally* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 1439–46 (2d ed., Mineola, N.Y.: Foundation Press, 1988) (reviewing the cases and noting the federal judiciary's "remarkable deference to state objectives" in most instances).

47. *See* MARY KENNEDY ET AL., U.S. DEP'T OF EDUC., POVERTY, ACHIEVEMENT AND THE DISTRIBUTION OF COMPENSATORY EDUCATION SERVICES 22 (1986) (documenting the adverse relationship between high levels of school poverty and lower average school achievement); LAURA LIPPMAN ET AL., URBAN SCHOOLS: THE CHALLENGE OF LOCATION AND POVERTY x–xii (1996) (reporting that both urban location and high school-poverty concentration were associated with lower academic performance); U.S. DEP'T OF EDUC., PROSPECTS: FINAL REPORT ON STUDENT OUTCOMES at v, 73 (Cambridge, Mass.: Abt Associates, 1997) (reporting extensive research revealing that "school poverty concentration is associated with lower academic performance"); U.S. DEP'T OF EDUC., SCHOOL POVERTY AND ACADEMIC PERFORMANCE: NAEP ACHIEVEMENT IN HIGH-POVERTY SCHOOLS 3–5 (Washington, D.C.: USDOE, 1998) (noting the relationship between high percentages of lower-income children within schools and the lower average academic performance by children in those schools on mathematics and reading achievement tests administered by the National Assessment of Educational Progress). Moreover, there is evidence that racial integration alone may improve the academic performance of minority children. See the studies cited in note 3, page 16.

48. *See, e.g.*, Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976); Yick Wo v. Hopkins, 118 U.S. 351 (1886).

49. *See* Leandro v. State, 346 N.C. 336, 488 S.E. 2d 249 (1997). *See also* John Charles Boger, Leandro v. State—*A New Era in Educational Reform?*, POPULAR GOVERNMENT, Spring 1998, at 2.

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

51. See the authorities cited in note 5, page 16.

52. *See* T. Keung Hui, *School Plan Draws Foes*, RALEIGH NEWS & OBSERVER, Apr. 7, 2000, at B1; T. Keung Hui, *Turned Out, Turned Away*, RALEIGH NEWS & OBSERVER, May 6, 2000, at A1 (describing the circumstances of the children to be moved, most of whom live in lower-income apartments with single working mothers, 81 percent of whom receive free or reduced-price school lunches, and 52 per cent of whom have scored below grade level on state end-of-grade tests).

53. Hui, *Turned Out*, at A1.

54. *See* Peter Schmidt, *La Crosse to Push Ahead with Income-Based Busing Plan*, EDUCATION WEEK, Aug. 5, 1992, available at http://www.edweek.com/ew/vol-11/40crosse.h11; Peter Schmidt, *District Proposes Assigning Pupils Based on Income*, EDUCATION WEEK, Oct. 30, 1991, available at http://www.edweek.com/ew/1991/09wis.h11.

55. Robert C. Johnston, *N.C. District to Integrate by Income*, EDUCATION WEEK, Apr. 26, 2000, at 1.

56. *See* Andrew Trotter, *Teachers Propose Integrating Schools by Socioeconomic Status*, EDUCATION WEEK, Dec. 2, 1998, available at http://www.edweek.com/ew/1998/14jefco.h18.

57. *See* Nanette Asimov, *S.F. District Ok[ay]s Race-Neutral School Plan*, SAN

FRANCISCO CHRONICLE, Jan. 7, 2000, available at http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/01/07/MN9.

Notes to Sidebar

1. For a more comprehensive analysis of these three decisions, *see* John Charles Boger, *Willful Colorblindness: The New Racial Piety and the Resegregation of Public Schools*, 78 NORTH CAROLINA LAW REVIEW 1719 (2000).

2. Capacchione v. Charlotte-Mecklenburg Schools, 57 F. Supp. 2d 228, 291–92 (W.D.N.C. 1999).

3. *See, e.g.*, James E. Rosenbaum et al., *Can the Kerner Commission's Housing Strategy Improve Employment, Education, and Social Integration for Low-Income Blacks?* in RACE, POVERTY & AMERICAN CITIES 273, 300 (John Charles Boger & Judith Welch Wegner eds., Chapel Hill, N.C.: UNC Press, 1996) [concluding that minority children who moved from segregated Chicago city schools to integrated Chicago suburban schools were "more likely to be (1) in school, (2) in college-track classes, (3) in four-year colleges, (4) employed, and (5) employed in jobs with benefits and better pay"]; Janet W. Schofield, *Promoting Positive Peer Relations in Desegregated Schools*, *in* BEYOND DESEGREGATION: THE POLITICS OF QUALITY IN AFRICAN AMERICAN SCHOOLING 91, 93 (Mwalimu J. Shujaa ed., Thousand Oaks, Cal.: Corwin Press, 1996) (noting that public schools present to many children their first and only public or private interracial experiences); Janet W. Schofield, *Review of Research on School Desegregation's Impact on Elementary and Secondary School Students*, *in* HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION (James A. Banks & Cherry A. McGee Banks eds., New York: Macmillan, 1994) (finding significant reductions in racial stereotyping and interracial anxieties, and significant improvements in positive responses to interracial vocational settings among adults who attended racially integrated schools); Marvin Dawkins et al., *Why Desegregate? The Effect of School Desegregation on Adult Occupational Desegregation of African Americans, Whites, and Hispanics*, 31 INTERNATIONAL JOURNAL OF CONTEMPORARY SOCIETY 273 (1994) (concluding that desegregated educational experiences lead to significant improvements in minority students' higher-education attainment, employment success, and choice of residential community).

Moreover, there is credible evidence that desegregated settings not only improve the social interaction of students but may lead to higher academic achievement. *See* Christopher Jencks & Meredith Phillips, *The Black-White Test Score Gap: An Introduction*, *in* THE BLACK-WHITE TEST SCORE GAP 1, 9, 26, 31 (Christopher Jencks & Meredith Phillips eds., Washington, D.C.: Brookings Inst. Press, 1998) (reporting extensive research findings suggesting that "[d]esegregation seems to have pushed up southern blacks' [school test] scores a little without affecting whites either way"); Rita E. Mahard & Robert L. Crain, *Research on Minority Achievement in Desegregated Schools*, *in* THE CONSEQUENCES OF SCHOOL DESEGREGATION 103–25 (Christine H. Rossell & Willis D. Hawley eds., Philadelphia: Temple Univ. Press, 1983) (finding that desegregated public school experiences that begin in the early grades lead to significant, though modest, improvements in test scores of minority students).

4. City of Richmond v. J. A. Croson Co., 488 U.S. 469 (1989) [setting forth a standard of "strict judicial scrutiny" for *all* state or local policies that employ race-conscious classifications and calling for their invalidation *unless* the state or local agency can demonstrate that the racial categories (1) will promote "compelling government interests" and (2) are "narrowly tailored" to achieve their compelling ends without causing undue racial injury to innocent victims]; Adarand Constructors v. Pena, 515 U.S. 200 (1995) (extending the rationale of *Croson* to federal programs); Metro Broad. v. FCC, 497 U.S. 547 (1990) (upholding, by a 5-to-4 vote, the Federal Communications Commission's use of racial and ethnic criteria, among other factors, in awarding broadcasting licenses; subsequently overruled in part in *Adarand*); Wessmann v. Gittens, 160 F.3d 790 (1st Cir. 1998) (holding that the Boston School Committee's consideration of race in allocating seats in the Boston Latin School violated the Equal Protection Clause).

5. *See generally* 3 EDUCATION LAW § 8.02(8), at 8–64 (James A. Rapp ed., New York: Matthew Bender, 1999) ("There is no constitutional right to a particular placement. A student does not have a proprietary interest in where the student receives an education. Students do not have a right to . . . a particular school"); LEROY J. PETERSON ET AL., THE LAW AND PUBLIC SCHOOL OPERATION § 11.6, at 333–34 (New York: Harper & Row, 1968) (stating that the school board is not required to assign a child "to the nearest school or the school most conveniently located," nor will a court "compel reassignment to the school selected by the parents. . . ."); 1 WILLIAM D. VALENTE, EDUCATION LAW: PUBLIC AND PRIVATE § 9.2, at 138–39 (St. Paul, Minn.: West Publ'g Co., 1985) ("The discretion vested in local school boards to assign students to particular schools is limited only by the rules against abuse of discretion and special circumstances. . . . Absent constitutional compulsion or state legislation that mandates neighborhood school assignments, students have no general right to be assigned to a neighborhood school"). *See also* Bustop, Inc. v. Board of Educ., 439 U.S. 1380 (1978) (Rehnquist, J., in chambers) (rejecting white parents' request for a stay of a voluntary desegregation plan in Los Angeles, in the process dismissing their "novel" argument "that each citizen of a State who is either a parent or a schoolchild has a 'federal right' to be 'free from racial quotas and to be free from extensive pupil transportation'"); *In re* United States *ex rel.* Missouri State High School Activities Ass'n, 682 F.2d 147, 152 (8th Cir. 1982) (observing that "[s]tudents have no indefeasible right to associate through choice of school" and that "[m]andatory assignment to public schools based on place of residence or other factors is clearly permissible"); Citizens against Mandatory Bussing v. Palmason, 495 P.2d 657, 663 (Wash. 1972) (finding "no authority in law for the proposition that parents have a vested right to send their children to, or that children have a vested right to attend, any particular school").

6. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16 (1971) (emphasis added).

7. *Bustop*, 439 U.S. 1380.

8. Keyes v. School Dist. No. 1, 413 U.S. 189, 242 (Powell, J., concurring in part and dissenting in part). *See also* Washington v. Seattle School Dist. No. 1, 458 U.S. 457, 473–74 (1982) (invalidating a statewide referendum that sought to forbid all busing for integrative purposes and restoring a local school district's authority to implement a race-conscious student assignment plan).

9. Several other circuits have reached conclusions contrary to those of *Tuttle* and *Eisenberg*. *See, e.g.*, Brewer v. West Irondequoit Central School Dist., 212 F.3d 738, 741 (2d Cir. 2000) (strongly suggesting that ending racial isolation in public schools may be a permissible state objective); Hunter v. Regents of the Univ. of Cal., 190 F.3d 1061, 1063 (9th Cir. 1999) (upholding the use of racial preferences as compelling considerations in the admission of students to a research elementary school associated with the University of California at Los Angeles's School of Education); Wittmer v. Peters, 87 F.3d 916, 919 (7th Cir. 1996) (describing as "unreasonable" the contention that the use of racial preferences can be limited solely to remedial settings). *But see Wessmann*, 160 F.3d at 796–809 (finding no compelling interest to justify the Boston School Committee's use of race in selecting students for admission to a merit-based high school); Hopwood v. Texas, 78 F.3d 932, 951 (5th Cir. 1996) (holding that race and ethnicity may not be considered in the admission process at the University of Texas Law School).

Modeling Good Citizenship for the Next Generation

Susan Leigh Flinspach and Jason Bradley Kay

Birth may make us citizens in law; in practice, however, competent and responsible citizens are created through education in school, in the family, and in the larger community.[1]

Young people learn about civic responsibility and government from many sources, including their local public officials. As models of active citizenship, these officials set examples for their community's youth. They can be particularly influential when they take part in classroom instruction, giving students the opportunity to develop an appreciation for them as individuals, for their offices, and for the work of their offices. The time that public officials dedicate to the civic education of students helps strengthen the next generation of American citizens.

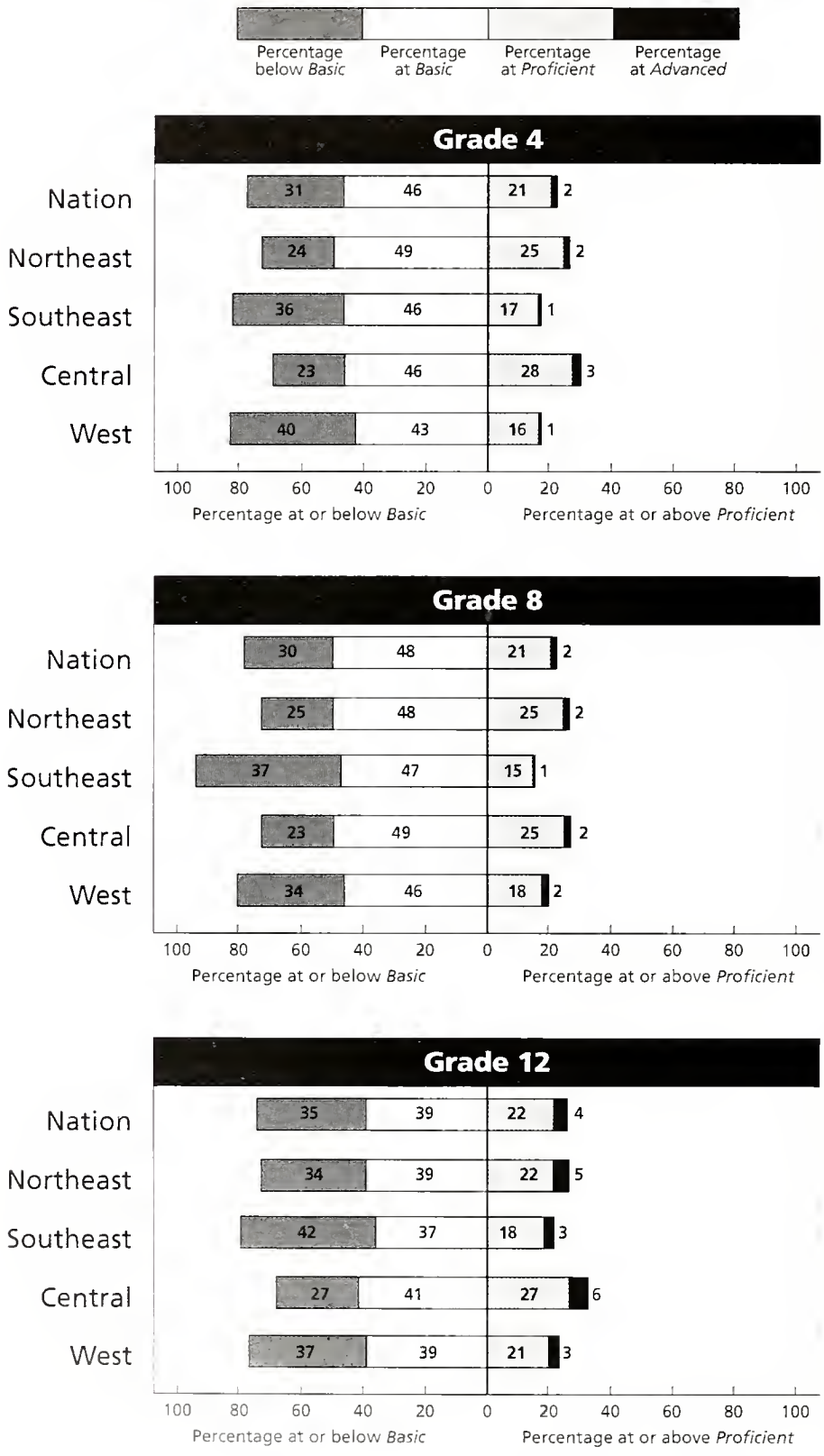
This article reports on the performance of today's youth on several civic indicators. It also discusses the notion that local public officials are role models of good citizenship. Finally, it uses cases from two North Carolina high schools to illustrate that notion.

The Problem

The engagement of young people in public life is directly shaped by their political socialization,[2] that is, by what they learn about politics and government from family, peers, community members, and the media. Less than one quarter of youth report that they often talk about politics, government, or current events with their parents.[3] When such conversations do take place, American students may hear more about the negatives of government than about the positives. Press coverage is perceived by many as highlighting scandals and political strife. Parents' voting behavior strongly affects their children's voting behavior,[4] and "more than half the children in America live in households where neither parent votes."[5] Following a longitudinal study of civic education in five countries, including the United States, Carole Hahn reported, "The depth of students' political cynicism . . . is troubling. Few stu-

Flinspach is an Institute of Government faculty member who specializes in educational policy and leadership. Kay is a student in the Institute of Government's Master of Public Administration Program and in the UNC–CH School of Law. Contact them at flinspac@iogmail.iog.unc.edu and jasonkay@unc.edu.

Figure 1. **1998 Civics Assessment—Students by Achievement Level**



Source: Adapted from ANTHONY D. LUTKUS ET AL., NAEP 1998 CIVICS REPORT CARD FOR THE NATION 58 (NCES 2000-457, Washington, D.C.: National Center for Educ. Statistics, 1999). Percentages may not add to 100, or to the exact percentages below, at, or above achievement levels, because of rounding.

dents have met any elected government officials, and they rarely hear adults talking about the good, hard working representatives. 'Politics,' 'politicians,' and 'government' seem to be dirty words for many youth in this study. . . ."[6]

A recent study by the National Association of Secretaries of State provides more evidence that large numbers of youth in the United States are either apathetic or cynical about government and politics and do not participate fully as citizens of a constitutional democracy.[7] The study was based on voting records, a survey of fifteen- to twenty-four-year-olds, and focus groups with young people. The report of the study concludes that "[y]oung people suffer from an information and skill deficit about politics and the process of voting. Their personalized and often vague understanding of citizenship deters them from getting involved in the political process."[8]

The report documents that, in the United States, from 1972, when eighteen-year-olds were first permitted to vote, to the present, there has been a steady decline in the voter turnout of eighteen- to twenty-four-year-olds. Fifty percent of eligible adults in this age group voted in 1972, but only 32 percent voted in the 1996 presidential elections.[9] Just one-fourth of the survey respondents said that "civic duty" motivates them to vote.[10]

Many citizens expect education in the social studies, particularly in government and civics (a social science dealing with the rights and duties of citizens), to counter the apathy and the cynicism that students often acquire through years of political socialization. Civic knowledge gained in school can shape students' attitudes about government and politics, countering some negative socialization effects.[11]

Unfortunately, too few students are knowledgeable about civics. This finding of the study by the National Association of Secretaries of State[12] is consistent with the Nation's Civics Report Cards issued by the National Assessment of Educational Progress (NAEP). NAEP tested students on citizenship or civics in 1969–70, 1971–72, 1975–76, 1981–82, 1988, and 1998.[13] The scope and the content of the NAEP assessments have changed over time, but until the most recent one, they focused on stu-

dents' civic knowledge. In 1988, for example, the assessment measured the knowledge of fourth, eighth, and twelfth graders about democratic principles and the purposes, the organization, and the functions of government. At a White House conference on character building, the Center for Civic Education reported the results: "[S]tudents have only a superficial knowledge of civics and lack depth of understanding. For example, only 38% of eighth graders knew that Congress makes laws; and nearly half of high school seniors did not recognize typical examples of the federal system of checks and balances."[14]

For the 1998 NAEP civics assessment, policy makers and test designers were interested in more than students' civic knowledge. They designed the measurement framework to include intellectual and participatory skills and civic dispositions (that is, civic attitudes and values), in addition to civic knowledge.[15] The skills component evaluated students' use of knowledge "to think and act effectively and in a reasoned manner in response to the challenges of civic life. . . ."[16] The component dealing with civic dispositions assessed the traits or values of individuals that influence how they carry out their citizenship. These include the "traits of private character" essential to the preservation and improvement of democracy, such as moral responsibility and respect for individual worth and human dignity, and the "traits of public character," such as public spiritedness, respect for law, and civility.[17]

The tests were administered to a national sample of students in the fourth, eighth, and twelfth grades. The results are reported in terms of achievement levels: basic, proficient, and advanced (see Figure 1). "Basic" represents "partial mastery of the knowledge and skills that are fundamental for proficient work at a given grade"; "proficient" signifies "solid academic performance" for the grade; and "advanced" denotes superior performance.[18] The achievement goal set by the National Assessment Governing Board is the proficient level; performance at the basic level or below is under the standard set for the grade.[19]

Across the three grades, less than a quarter of students nationwide scored at the proficient or advanced level. For the Southeast, which includes North Carolina, about 80 percent of the students tested at each grade level were not proficient in civics. According to Charles Quigley, executive director of the Center for Civic Education, "The NAEP findings are grounds for concern. They call for action to remedy a serious deficiency in the education of American citizens."[20]

These data paint a troubling picture. Many youth lack the knowledge, the skills, and the dispositions to become fully engaged in the democratic process. Many are cynical about politics, and the percentage of young people who vote has been in decline since 1972. Taken together, the indicators highlight a problem with the transmission of the tradition of American democracy from one generation to the next.

In the United States, from 1972, when eighteen-year-olds were first permitted to vote, to the present, there has been a steady decline in the voter turnout of eighteen- to twenty-four-year-olds.

Local Public Officials as Role Models

The habits of the mind, as well as what Alexis de Tocqueville called the "habits of the heart," the dispositions that inform the democratic ethos, are not inherited. They must be fostered and nurtured by word and study and by the power of example. Democracy is not a "machine that would go of itself," but must be consciously reproduced, one generation instructing the next in the knowledge and skills, as well as the civic character and commitments required for its sustenance.[21]

How can young citizens be encouraged to lead fuller, more productive civic lives? The answer is not simple. The schools, the institutions of civil society, political organizations, and government officials all have a part in responding to this problem. The strategy described in this section pertains to local public officials and "the power of example."

Local government officials have a unique opportunity to influence the civic dispositions of students. When appointed or elected officials take office, they become part of the civic education of today's youth. What they choose to do and how they choose to do it may be held up for scrutiny at the community's dinner tables and in its classrooms. Because they are accessible, local officials can easily model for students what citizenship is all about. They have first-hand opportunities to help prepare the students of their communities to become better citizens.

For local public officials, the job of role model has two components: collective actions and individual actions. The collective component refers to the ways that government officials work with one another and with their constituents. Do they collectively strive to practice citizenship in their governmental functions? Do they infuse the "ideals of citizenship into the discourse and activities of their organizations"?[22] For example, a local governing board with a history of dealing with conflict through personal attacks might begin to use a code of ethics that stresses mutual respect despite disagreements. Over time, that collective action might dispel some of the voters' political cynicism and have a positive effect on the civic dispositions of the community and its youth.

The individual actions of public officials also are likely to influence young people. In the conclusion of her book on the effectiveness of civic education in five countries over the last fifteen years, Hahn posed the following question:

> *Few students in any of the five countries reported ever meeting politicians, and I could not help but wonder: If they had more opportunities to talk to people who worked on local councils, in state or provincial legislatures, or in grassroots political organizations, might students develop a more balanced sense of the work that many people do on behalf of the public?*[23]

An Activity for a Unit on School Assignment

Whose Job Is It to Fix It?

The County Commissioner's, the School Board Member's, or Yours . . .

Cooperative Learning Activity

Local government officials, such as the county commissioners and school board members, have the responsibility of making decisions that have long-lasting effects on our schools and community. As you do in your own personal problem solving, these officials have to consider specific costs and benefits as they make these decisions.

County commissioners and school board members each play different roles in relation to public education. One is responsible for funding while the other determines school policy. Today, we will put ourselves in the "shoes" of these local government officials as we try to determine how they would respond to certain issues or problems concerning public schools.

With your assigned group,

- read each of the following scenarios,
- identify who (either the county commissioner, school board member, or both) would address the problem/issue, and
- discuss ways the local government official could respond (be sure to list your suggestions).

Scenario #1

A new study shows that corporal punishment is the most effective means of disciplining the students. As a result, several local high schools decide to reinstate paddling as the primary means of discipline. Students who choose to forgo the paddling are automatically suspended for ten days. Many parents and students are upset by this policy.

Scenario #2

Governor Jim Hunt has officially declared 2001 as the year of technology for North Carolina's Public Schools. Wake County, as the location of the state government, wants to be an example for the other counties to follow. Who will decide how Wake County can become the leader of technology in North Carolina?

Scenario #3

One municipality in Wake County experiences a huge population boom after Microsoft decides to build its East Coast headquarters there. As a result, the high school is extremely overcrowded. Lunches are shorter, lockers must be shared, both trailers and classes are filled past capacity, and grades are on the decline. Parents are angry and want this issue to be addressed immediately.

Scenario #4

Your parents receive a letter that the new school assignment plan has decided that your younger brother will be attending another high school. However, you will continue to go here. Your parents would prefer that the two of you attend the same high school. What can be done?

The seventy-eight people attending a Partners' Meeting of the North Carolina Civic Education Consortium in autumn 1998 agreed with Hahn about the importance of public official–student interactions. When polled about the major barriers to civic education in the state, they indicated that students' lack of direct contact with public servants in city, county, and state government was the greatest barrier.[24]

Many public officials are happy to make time to shake hands with students at graduation or to attend a principal's breakfast for honor students. Some local politicians participate in the annual Elected Officials Go to School program sponsored by the North Carolina Parent-Teacher Association. Not only do these "ceremonial tasks"[25] make students feel special, but as students learn about the people they meet, the experience breathes life into classroom lessons about local government. Both effects are likely to bolster students' civic dispositions.

Local public officials have the opportunity to influence students directly and more substantially as civic role models when they act as resources for teachers, especially when they participate in instruction about what government officials do. At the request of a teacher or a principal, some officials agree to speak to students about how their community is addressing a particular problem. Others visit classes to answer students' questions as part of an instructional unit on local government. Still others allow students to interview them or to "shadow" them —that is, to follow them around for a day or so as they carry out their public responsibilities. Activities that bring local public officials into face-to-face learning interactions with students who are interested in their work are likely to make a lasting impression on the students.[26]

Two Cases

The two cases presented in this section have their roots in the 1999 Summer Civics Teaching Institute sponsored by the Civic Education Consortium. The Civic Education Consortium is a partnership of more than 200 organizations and individuals that seeks to build a new generation of knowledgeable, caring, and involved North Carolina citizens. The

Consortium's Summer Civics Teaching Institute is a professional development program for high school social studies teachers throughout the state. During the one-week Teaching Institute and in the subsequent months, the teachers create and refine an instructional unit focusing on civics or government. The Teaching Institute encourages teachers to break away from the textbook and use their community as a resource for learning. Each unit builds up to a culminating activity through which students demonstrate their mastery of the material.

Local government officials were key community resources in both of the cases discussed here. The first case describes a unit entitled "Why Can't I Go to School with You? A Look at School Assignment and Redistricting," which brought three school board members and a county commissioner into a Wake County high school. The second case features a unit called "That's Not Fair!," which introduced Henderson County High School students to the law. Local officials helped with field trips and classroom activities.

A Unit on School Assignment

Kara McCraw and Susan Taylor, teachers at Leesville Road High School in Raleigh, decided to focus their local government unit on a subject that would engage their students personally: the assignment of students to schools. Many of their students had had to attend several elementary and middle schools, mostly to accommodate the rapid growth of the school system. Students living across the street from Leesville Road High were not within its attendance boundaries, yet some of the school's students rode the bus 15 to 20 minutes every morning to come from another neighborhood. Because of their experiences with student assignment, many students had strong feelings about the topic, and Kara and Susan hoped that these feelings would draw them into the local government lessons.

The teachers designed the unit to instruct students about the ways that governments, particularly local governments, affect schools and students. Recognizing that the assignment plans that shape actual school boundaries are complex, they developed the unit around four general approaches to student assignment. They asked several public officials to participate in the local government lessons and in the culminating activity, a School Board Forum at which school board members would select the best small-group presentation about student assignment in Wake County Schools.

Students begin learning about the workings of government when they are young.

The teachers divided the unit into four lessons. The first lesson had two objectives: (1) to introduce the students to the roles of the federal, state, and local governments in education and (2) to help students understand what student assignment is and how it affects them personally. The classes read about governmental roles in education, and they discussed why class members from different neighborhoods attended Leesville Road High School. Their assignments included creating a graphic organizer (a visual organization of their thoughts) entitled Public Schools, the Government, and You and making a pie chart to represent educational funding in North Carolina from federal, state, and local sources.

In the second lesson, entitled Whose Job Is It to Fix It?, two Wake County public officials visited the classroom to teach students about their work. A school board member and a county commissioner helped students distinguish the education-related jobs of county commissioners from those of school board members. (For one activity in this lesson, see the opposite page.)

The third lesson dealt with student assignment and the judicial system. After reviewing three court cases, *Brown v. Board of Education*, *Swann v. Charlotte-Mecklenburg Board of Education*, and *Capacchione v. Charlotte-Mecklenburg Schools*, each student wrote a reflective essay considering whether race should be a factor in Wake County student assignments. (For a legal discussion of this issue, see the article on page 2.)

The final lesson sent students to the Web to learn about four approaches to student assignment: neighborhood schools; controlled-choice plans; charter schools; and the goals and the criteria for the 1999–2000 Wake County student assignment plan (not the plan itself). Working in groups of four, the students researched the approaches using Web sites and materials selected by the teachers. Each student wrote a research paper, and each group prepared a presentation recommending one of the approaches for the Wake County Schools. The groups made their presentations to the other students, the teachers, and the assistant principal, who selected four groups to present their projects at the School Board Forum. Three Wake County school board members attended the School Board Forum, which was held in the high school's media center. They rated the presenta-

Loony Laws

Exercise for Unit on the Law

In Vermont it is illegal to whistle under water.

In Pueblo, Colorado, it is illegal to raise a dandelion or permit one to grow within the city limits.

To take a bath in Boston, you must have a doctor's written prescription.

You can attach a horn to your bicycle in New Mexico only if it produces a harmonious sound.

Idaho law makes it illegal to give your sweetheart a box of candy weighing less than fifty pounds.

A kiss can last no longer than one second in Halethorpe, Maryland.

In Hawaii, it is illegal to insert pennies in your ears.

In Nebraska, sneezing in public is prohibited by law.

In South Dakota, an eighty-year-old woman cannot stop on the street to talk to a young married man.

It is illegal to shoot open a can of food in Spades, Indiana.

Singing out of tune in North Carolina is against the law.

A Louisiana law upholds your right to grow as tall as you like.

Can you figure out why each law might have been passed?
What conditions in society might have led to its passing? Share your ideas with the rest of the class.

Are there laws today that might be considered loony in the future?

Write down a rule or law that you must follow at home or at school that seems silly to you.
Explain why you think it is silly. Ask other students to provide good reasons for your rule or law.

For more Loony Laws, visit www.dumblaws.com.

tions, picking the student group with the most convincing arguments as the winner. The school board members praised all the students for their high-quality research and their presentation skills.

As the unit progressed, Kara and Susan noticed several indicators of heightened student interest—for example, 100 percent participation (with one excused absence) in the student presentations; excitement about writing the research papers ("because they wanted to write on this topic"); and a student coming to school on a snow day to get a book needed to finish the assignment. Kara and Susan said that, as a result of the unit, "our students are aware of the issues surrounding the new school reassignment plan, they know who represents their district on the school board, and they know who their county commissioner is."

The teachers counted on the assistance of several Wake County public officials with the instruction, and they felt that the officials' participation was one of the best features of the unit. For example, students were able to pose their questions about the jobs of the county commissioners and the school board directly to representatives of those two groups. The School Board Forum, which involved three school board members, honored the top student groups and reinforced the point that the school board makes final decisions about student assignment. A student in one of the top student groups commented that his favorite part of the unit was the School Board Forum. The officials involved in this unit presented the students with personal examples of public service and civic duty, as well as information about local government.

A Unit on the Law

Sue Moon and Patty Poston from North Henderson High School in Henderson County developed a unit to help their students understand government institutions. The purpose of the unit, entitled "That's Not Fair!," was to increase students' knowledge of and involvement in a subject close to home but often poorly understood by high school students—the law. The teachers wanted students to see the law from the perspective of the local government officials who create, implement, and enforce it. Consequently they designed the unit to expose students to the difficult choices that must be made in creating and enforcing new laws or policies. Rather than focusing exclusively on the laws themselves or on the process of law enforcement, Sue and Patty sought to give the students a living perspective of the relationship between laws and individuals in a democratic society.

The teachers organized the lessons within the unit to help students achieve three primary goals. The first goal was for students to be able to explain why laws are needed and how they are enacted, implemented, and enforced. To help students meet this goal, Sue and Patty created an activity called Loony Laws, which required students to examine a "strange" law and think of a reason why it might have been written. (For the exercise given to students, see the opposite page.)

Local public officials have the opportunity to influence students directly and more substantially as civic role models when they act as resources for teachers, especially when they participate in instruction about what government officials do.

The second goal was for students to investigate issues and problems confronting the American legal system. To meet this goal, students examined problems with either prison overcrowding or parole laws, and they thought about how these problems might be solved.

The unit's final goal was for students to gain an ability to explain their rights and to analyze the obligations of responsible citizenship. A critical part of achieving this goal was to teach students how to take an active part in their local communities. Overall, the unit gave students a knowledge of the laws affecting their community and engaged them in creating solutions to local legal issues.

The teachers depended on local government officials to help teach and act as role models for the unit. Local officials helped with both in-class activities and field trips. Students conversed with a local sheriff about the distinction between civil and criminal laws and about the punishments for various crimes. They analyzed a difficult parole decision and discussed their solution with a parole officer. They visited a state prison and talked to inmates. Several other government officials, including an assistant district attorney and a judge, visited the class to give the students a perspective on working in law-related jobs and dealing with legal issues. Throughout the unit, students were exposed to officials who work closely with legal issues and who were eager to invest time and energy in the students' learning.

The unit culminated with students creating final projects that reflected what they had learned from the unit and what opinions they had formed. Some students investigated and reported on a current law and its impact on society. Others wrote well-researched editorials on issues such as treatment of prisoners, effectiveness of early release programs, and success of prison rehabilitation.

The final projects included articles, editorials, surveys, public opinion polls, interviews, and political cartoons. Local government officials involved with the legal system reviewed and evaluated the projects. The teachers displayed the projects around the classroom and the school, and they submitted the best examples to the local newspaper.

At the end of the unit, the teachers noted that the students showed marked improvement in the three goal areas, especially in understanding their rights and responsibilities as citizens. Students developed an understanding of the relationship between laws and individuals, and of the complex issues involved in creating and implementing laws. The students also showed an increased respect for the role that laws play in a democratic society, and a desire to get personally involved in the legal process. One student wrote a letter to the Center for the Prevention of School Violence, and another said he would write his congressman to disagree with a proposed law.

In addition to these indicators of learning and citizenship behavior, students simply enjoyed the unit. One student's comment typified this sentiment: "I liked the unit, in general, and I learned a lot about laws, the law system, and court procedures. I think this knowledge will really benefit me when I get older."

Sue and Patty highlighted the benefit that local officials brought to the students throughout the unit. Sue observed that the involvement of local officials in the field trip to the prison had an especially strong influence. "The students don't forget that stuff," she said. "It makes a lasting impact. The local officials know so much more than I do—they have hands-on knowledge."

What local officials add to the classroom through their involvement is not only knowledge but the real-life example of civic responsibility.

The students corroborated the teachers' observations with their comments. For example:

- "I liked the people that came in and talked to us. . . . It was fun, and I learned a lot of stuff at the same time."
- "I liked having the live interviews."

Sue observed an unanticipated change in the students' perspectives. She found that they began to have greater respect for their local officials: "The students started to see them as real people who deal with hard issues, and as valuable resources for their learning. It was great for the students to see the officials take an interest in their education."

The unit was greatly enriched by the involvement of local public officials, and the teachers stressed the importance of their participation. Sue commented that local officials "add to the classroom. Who better to come in and talk about these issues than someone who does it?"

What local officials add to the classroom through their involvement is not only knowledge but the real-life example of civic responsibility. One goal of the unit was to help foster civic responsibility in the students, and local officials provided excellent examples for the students to follow. Sue stated, "We talk about responsibility and citizenship with the students and stress its importance. When local officials come in and help with units like this, they are sending a message that they are willing to take responsibility, too."

Conclusion

Local public officials are part of the solution to the problems of cynicism and apathy among young citizens. As role models of public service and civic duty, they set an example for their communities. Whenever their good example directly touches the lives of students, it helps counter the negative influences that are part of young people's political socialization. Local public officials who serve as instructional resources model civic responsibility for classrooms of future voters and public officials in ways that only those who fulfill that responsibility can do.

Notes

1. Center for Civic Education, CIVITAS: A Framework for Civic Education 4 (Charles N. Quigley ed., Calabasas, Cal.: the Center, 1991).

2. *See* G. Almond & S. Verba, The Civic Culture (Princeton, N.J.: Princeton Univ. Press, 1963); K. P. Langton, Political Socialization (New York: Oxford Univ. Press, 1969); J. D. Miller & L. Kimmel, The Education of 21st Century Citizens: Crossing the Bridges to Participation, Paper presented to the Social Science Education Consortium, Asilomar, Cal. (June 1997).

3. National Ass'n of Secretaries of State, New Millennium Project—Phase I, A Nationwide Study of 15–24 Year Old Youth 33 (1999), available at http://www.nass.org.

4. New Millennium Project, at 8.

5. Adam Clymer, *Why We Don't Care about Politics*, Raleigh News & Observer, Jan. 2, 2000, at 6A.

6. Carole L. Hahn, Becoming Political: Comparative Perspectives on Citizenship Education 31 (Albany: State Univ. of New York Press, 1998).

7. New Millennium Project, at 5.

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9. *Id.* at 11.

10. *Id.* at 40.

11. Quigley lays out a framework for how this works, and Hahn documents this empirically. Charles N. Quigley, *Rationale for Civic Education and Civic Participation*, in CIVITAS, at 3–8; Hahn, Becoming Political, at 239.

12. New Millennium Project, at 7–8.

13. National Assessment Governing Bd., Civic Framework for the 1998 National Assessment of Educational Progress 10–11 (NAEP Civics Consensus Project, Washington, D.C.: the Board, 1996).

14. Center for Civic Education, The Role of Civic Education: A Report of the Task Force on Civic Education 7, Report Presented at the Second Annual White House Conference on Character Building for a Democratic, Civil Society, Washington, D.C. (May 19–20, 1995).

15. Civic Framework, at 24–33.

16. *Id.* at 18.

17. *Id.* at 31–32.

18. Anthony D. Lutkus et al., NAEP 1998 Civics Report Card for the Nation 11 (NCES 2000-457, Washington, D.C.: National Center for Educ. Statistics, 1999), available at www.ed.gov/nationsreportcard.

19. Lutkus et al., NAEP 1998 Civics Report Card, at 10–11.

20. Charles N. Quigley, *Response to Findings of the NAEP 1998 Civics Report Card for the Nation (1999/2000)* (visited Oct. 31, 2000), available at http://www.civiced.org/naep_response.html.

21. Center for Civic Education, The Role of Civic Education, at 3.

22. Tony Massengale & Peg Michels, *Civic Organizing and the Renewal of Public Education*, 64 Social Education 53, 53 (2000).

23. Hahn, Becoming Political, at 238.

24. E-mail and follow-up mailing of survey form and results, from Debra Henzey, Executive Director, Civic Education Consortium (Mar. 27, 2000).

25. James H. Svara, *Key Leadership Issues and the Future of Council-Manager Government*, in Facilitative Leadership in Local Government: Lessons from Successful Mayors and Chairpersons 216, 225 (James H. Svara & Associates eds., San Francisco: Jossey-Bass, 1994).

26. The North Carolina City/County Management Association maintains a list of managers and other local officials who have volunteered to help teachers with local government. The list is at http://ncinfo.iog.unc.edu/programs/civiced/community/resources/index.html. For more information, contact Jan Boyette, Civic Education Coordinator, at (919) 220-2552 or at j.boyette@gte.net.

How Local Governments Work with Nonprofit Organizations in North Carolina

Gordon P. Whitaker and Rosalind Day

Over the past two decades and especially during the 1990s, local governments all across the United States have increased their involvement with nonprofit organizations. As municipal and county governments deal with "devolution" (transfer) of public service responsibilities from state and federal governments, they face the challenges of providing more and better service while meeting difficult fiscal limits. To help take on these challenges, many have involved nonprofits in service delivery, drawing on these organizations' volunteers and private financial resources, as well as their greater flexibility of action. Some nonprofits also have become very skilled as advocates for the clients they serve, making persuasive appeals for public funding of their work or otherwise helping shape governments' priorities. In some cases, nonprofits and local governments have partnered to develop and implement public service programs jointly.[1]

What is the situation in North Carolina? This article presents an overview of how North Carolina municipalities and counties are involved with nonprofit organizations in their communities.[2] Because governments' funding of nonprofits is the most frequent sort of continuing relationship between the two types of organizations, the article looks in greatest detail at local governments' funding processes and reporting requirements for non-

Volunteers with the nonprofit organization Habitat for Humanity frame a house being built on land donated by Durham.

DURHAM HABITAT FOR HUMANITY

Whitaker is an Institute of Government faculty member who specializes in local public management, including relationships between governments and nonprofit organizations. Day is a recent graduate of Duke Law School who now works in the Charlotte office of Moore & Van Allen. Contact them at whitaker@iogmail.iog.unc.edu and rosalindday@mvalaw.com.

TABLE 1. STUDY RESPONDENTS

Population, 1997	N.C. Total	# Responding	% Responding
Cities			
Less than 1,000	237	14	6
1,000–4,999	194	72	37
5,000–9,999	47	32	68
10,000–24,999	35	24	69
25,000–49,999	9	5	56
50,000–99,999	8	8	100
100,000 and up	6	6	100
Total	**536**	**161**	**30**
Counties			
Less than 25,000	29	15	52
25,000–49,999	25	11	44
50,000–99,999	23	13	57
100,000–199,999	18	12	67
200,000 and up	5	5	100
Total	**100**	**56**	**56**

profits. Other important relationships also are outlined.

A Definition

The term "nonprofit organization" refers to a corporation whose charter prohibits the distribution of profits to officers or members. Nonprofits thus are private entities. Each has articles of incorporation stating its purpose, and a volunteer board of directors responsible for the corporation.

There are many kinds of nonprofit organizations. Some are clubs or other organizations (like mutual insurance companies) that exist to serve their members. Others have a public service purpose. If a nonprofit's purpose is religious, educational, charitable, scientific, literary, or cultural, it can qualify for special tax status under the U.S. Internal Revenue Code's Section 501(c)3. Donations to 501(c)3 organizations are tax-deductible, and this encourages private giving to support them. Most of the nonprofits to which local governments allocate public funds

TABLE 2. LOCAL GOVERNMENTS' RELATIONSHIPS WITH NONPROFIT ORGANIZATIONS

Population, 1997	# Responding	% Planning Jointly	% Coordinating Service Delivery	% Developing Programs Together	% Providing In-Kind Support	% Budgeting Funds
Cities						
Less than 1,000	14	21	21	7	50	64
1,000–4,999	72	26	18	24	56	68
5,000–9,999	32	34	34	41	63	88
10,000–24,999	24	33	42	42	67	96
25,000–49,999	5	40	20	40	80	100
50,000–99,999	8	50	75	63	100	88
100,000 and up	6	67	100	50	100	100
Total	**161**	**32**	**31**	**32**	**63**	**79**
Counties						
Less than 25,000	15	60	47	33	31	93
25,000–49,999	11	45	55	36	32	91
50,000–99,999	13	38	23	38	39	92
100,000–199,999	12	50	42	25	28	100
200,000 and up	5	20	80	40	80	100
Total	**56**	**46**	**45**	**34**	**63**	**95**

are 501(c)3 organizations. These are the nonprofits most likely to provide services that meet local public purposes. A local government can fund nonprofits only to carry out services that the government itself is authorized to provide.[3]

A Survey on Relationships

To get an overview of North Carolina local governments' relationships with nonprofit organizations, in 1999 the Institute of Government surveyed all 536 municipalities and 100 counties. The mail questionnaire asked about their relationships in 1997–98.

Study Respondents

A total of 161 municipalities and 56 counties responded to the survey (for a breakdown of responses by type of jurisdiction and population range, see Table 1). Respondents included city and county managers, town clerks, and budget or finance personnel.

Those responding included most of the largest municipalities in the state but few of the smallest ones. Thus the data overrepresent large municipalities. (To simplify discussion, all municipalities are hereinafter referred to as "cities".)

In contrast, about half of the counties in each population range responded, although in this category too, the largest units were most likely to respond. Thus, although the county data appear to be much more representative of the state, county totals also are disproportionately affected by the large counties.

Kinds of Relationships

Local governments can have continuing relationships of several kinds with nonprofit organizations. The two types of organizations can plan together regarding public service needs, they can coordinate their services, and they can develop programs together. Also, governments can provide both in-kind and financial resources to nonprofits. The Institute survey asked about all these ways of working together (for the results, see Table 2).

About a third of the cities and almost half of the counties reported planning jointly with nonprofit organizations. In some communities, for example, interagency councils include representatives from local government and nonprofits and meet to assess community needs and plan ways to address them.

Similar numbers reported coordinating service delivery. This occurs, for example, when a local government's dispatchers serve volunteer fire or emergency medical squads, or when county social workers refer clients to a mix of nonprofit and government services.

Also about a third of the cities and a third of the counties reported developing programs with nonprofit organizations. Local governments partner with these organizations in creating new public service programs in areas such as economic development, parks and recreation, and social services.

Much more common than joint planning and programming, and coordinated service delivery, though, are relationships in which local governments supply in-kind or financial resources to support public services provided by nonprofit organizations. More than 60 percent of cities and counties reported in-kind support. Office space was frequently mentioned as one type of such support, with some governments also making staff or supplies available to help nonprofits carry out public services. Financial support was by far the most common way for local governments to relate to nonprofits, however. Nearly 80 percent of the cities and 95 percent of the counties reported that they had provided funds to at least one nonprofit during 1997–98.

Government Funding

Altogether, the cities and the counties responding to the Institute survey reported budgeting nearly $75 million in funding for nonprofit organizations in 1997–98: 127 cities, more than $26 million (just less than 1 percent of their total expenditures); and 53 counties, more than $48 million (about 1.5 percent of their total expenditures).

Total funding for nonprofit organizations is likely to be considerably higher, though. Most respondents reported only funds earmarked for nonprofits in their government's annual budget. The reported total thus does not include funding of nonprofits through contracts with

TABLE 3. BUDGETED SUPPORT FOR NONPROFIT ORGANIZATIONS (NPOs)

Population, 1997	# Budgeting for NPOs	Mean # of NPOs Funded	Mean Amt. Funded
Cities			
Less than 1,000	9	3.8	$ 17,737
1,000–4,999	49	3.9	25,492
5,000–9,999	28	6.5	49,967
10,000–24,999	23	9.4	109,936
25,000–49,999	5	15.0	296,392
50,000–99,999	7	13.3	597,298
100,000 and up	6	32.8	2,581,062
Total/overall mean	**127**	**7.8**	**208,395**
Counties			
Less than 25,000	14	10.9	$ 296,556
25,000–49,999	10	18.1	491,730
50,000–99,999	12	22.8	773,890
100,000–199,999	12	31.7	1,230,497
200,000 and up	5	37.0	2,978,109
Total/overall mean	**53**	**22.1**	**905,892**

operating departments financed from funds budgeted to the departments themselves. For example, county funding of education, mental health, public health, and social service programs often comes to nonprofits through contracts awarded by the public schools, the area mental health authority, the county public health department, or the county department of social services. Unless these contracts with departments were mentioned in the county's annual budget, they were usually not reported in the survey.

Cities fund fewer nonprofit organizations than counties do (for a breakdown of mean numbers and amounts by type of jurisdiction and population range, see Table 3, page 27). A total of 127 cities reported budgeting for only 986 nonprofits. Overall, on average, the responding cities funded 8 organizations, at $208,395 per city.[4]

The smallest cities were least likely to budget funds for nonprofit organizations, and, if they did, they funded very few and at low levels. Cities of at least 5,000 people were almost as likely as counties to budget for nonprofits, but they too tended to fund fewer of them and to fund them at lower levels than counties did. Thus, on average, cities with populations between 10,000 and 25,000 funded about 9 nonprofits and allocated about $110,000 per city, compared with 11 organizations and $300,000 in allocations for all counties under 25,000. In the 25,000 to 50,000 range, cities averaged about 15 organizations funded and $300,000 in funding, whereas counties of that size averaged 18 funded and nearly $500,000 in funding. The gap narrowed only for the largest cities. On average, they budgeted funds for 33 organizations and allocated nearly $2.6 million per city—figures quite close to those for the largest counties.

Fifty-three counties reported funding a total of 1,172 nonprofit organizations. Overall, these county budgets averaged direct funding for about 22 nonprofits, at $905,892 per county.

Counties were very likely to budget funds for nonprofit organizations regardless of the county's size. Size of county affected the number of nonprofits funded and the level of support, however. On average, each of the smallest counties budgeted support for about 11 nonprofits and allocated about $300,000 to them. Larger counties allocated more funds to a larger number of nonprofits. The states' five largest counties budgeted funds for an average of 37 nonprofits, at an average cost of almost $3 million per county.

Kinds of Services Funded

Differences in patterns of funding for cities and counties (see Table 4) are related to the differences in the services that they provide. In North Carolina, counties have primary responsibility for delivery of human services, and this has been a major area of service devolution from federal and state governments. Many nonprofit organizations also deliver human services, so it is not surprising that county governments frequently choose to provide human services to their residents by funding nonprofit delivery of those services. In fact, 40 percent of the nonprofits that counties included in their budgets in 1997–98 were human services organizations. These include those providing mental health, sub-

Table 4. Types of Nonprofits Funded by Jurisdictions of Different Sizes

Population, 1997	% Human Services	% Public Safety	% Economic Development	% Recreation, Arts, Culture	% Envtl. Protection	% Other
Cities						
Less than 1,000	15	32	6	41	6	0
1,000–4,999	18	17	19	40	2	4
5,000–9,999	30	12	20	33	3	2
10,000–24,999	44	11	14	25	1	5
25,000–49,999	57	1	11	28	1	1
50,000–99,999	29	6	32	26	1	5
100,000 and up	46	9	15	29	1	1
Total	**35**	**12**	**18**	**31**	**2**	**2**
Counties						
Less than 25,000	29	41	7	17	1	6
25,000–49,999	27	43	12	15	1	3
50,000–99,999	33	34	9	15	3	5
100,000–199,999	43	18	10	18	2	8
200,000 and up	69	11	0	8	0	12
Total	**40**	**28**	**8**	**15**	**1**	**7**

Table 5. Procedures Used to Fund Nonprofit Organizations (NPOs)

Population, 1997	# Bdgting. for NPOs	% Using Reg. Bdgt. Process	% Using Funding Request Form	% Funding Recommended by				% NPOs Presenting Case
				Mgr.	Adv. Bd.	Depts.	Gov. Bd.	
Cities								
Less than 1,000	9	100	33	56	0	33	89	67
1,000–4,999	49	82	22	63	8	12	69	53
5,000–9,999	28	89	36	71	7	7	64	68
10,000–24,999	23	96	61	70	22	13	70	65
25,000–49,999	5	100	60	60	40	0	60	40
50,000–99,999	7	86	43	71	29	29	43	29
100,000 and up	6	100	100	50	50	50	50	50
Total	**127**	**89**	**39**	**65**	**14**	**15**	**67**	**57**
Counties								
Less than 25,000	14	86	43	64	14	0	57	57
25,000–49,999	10	100	60	100	30	20	50	50
50,000–99,999	12	92	58	83	33	33	50	42
100,000–199,999	12	92	75	75	42	25	83	50
200,000 and up	5	100	80	100	60	80	60	40
Total	**53**	**92**	**60**	**81**	**32**	**25**	**60**	**49**

stance abuse, public health, and social services. Higher proportions of the nonprofits funded provided human services in larger counties. Almost 70 percent of those funded in the largest counties were human services providers, whereas less than 30 percent of the nonprofits funded by counties with populations under 50,000 were.

Counties also often support public safety nonprofit organizations: volunteer fire departments, emergency rescue squads, animal shelters, dispute settlement centers, and so on. More than a quarter of the nonprofits that counties included in their budgets contributed directly to public safety. Higher proportions of the nonprofits funded provided public safety services in smaller counties. More than 40 percent of the nonprofits funded by counties with fewer than 50,000 people provided public safety services, whereas only about 10 percent of those funded by the largest counties did.

Recreation, arts, and culture programs were the third-largest category for county funding of nonprofit organizations, at 15 percent. There was little variation in this proportion by county size.

Somewhat surprisingly, human services nonprofit organizations also were the largest category funded by cities (35 percent). But cities tended to fund different human services agencies than counties did. Although there was some overlap, the human services nonprofits budgeted by cities were more likely to be related to housing, homelessness, or crisis intervention. As with counties, smaller jurisdictions tended to fund a lower proportion of human services nonprofits.

Public safety programs (including volunteer fire departments and delinquency prevention organizations) received considerably less support from cities—overall, only 12 percent. As with counties, however, public safety organizations made up a larger share of the nonprofit organizations funded by smaller jurisdictions. Almost a third of the nonprofits funded by cities under 1,000 provided public safety services.

Not surprisingly, recreational, arts, and cultural nonprofit organizations were frequently included in city budgets, comprising 31 percent of all nonprofits funded by cities. Many cities have traditionally supported programs in these areas to enhance quality of life for their residents, to attract new residents, and to encourage visits from tourists. In the smallest cities, about 40 percent of the nonprofits funded were in this category.

Economic development organizations (chambers of commerce and site development preparers, for example) also were among the nonprofit organizations commonly supported by cities, overall accounting for 18 percent. There was no systematic variation by city size in support for this kind of organization.

Budgeting for Nonprofits

Most local governments consider nonprofit funding requests as part of their regular budget process (see Table 5). Only a few local governments budget for nonprofit organizations outside this process. Allocations were incorporated into the regular budget process in 89 percent of the cities and 92 percent of the counties.

City and county budgeting practices for nonprofit organizations differed somewhat, though. For example, only 39 percent of the cities used a funding request form for nonprofits, whereas 60 percent of the counties used such a form. In general, smaller jurisdictions were less likely to use formal applications.

The fiscal year 1997–98 data suggest that formal funding requests became more common during the decade. A survey of practices during fiscal year 1990–91 revealed that only 40 percent of counties and 30 percent of cities considering nonprofit funding requests used a prescribed application form.[5]

For fiscal year 1997–98 in North Carolina cities and counties, the manager typically recommended nonprofit organizations for funding. This is not surprising, given the manager's responsibility to recommend a balanced budget to the governing board. Managers recommended nonprofit funding in 65 percent of the cities and 81 percent of the counties, with little systematic variation by size of jurisdiction.

Managers' involvement apparently changed little from 1990–91, when 63 percent of the cities and 74 percent of the counties reported the same practice.

For fiscal year 1997–98, advisory committees or operating departments also reviewed nonprofit funding requests in some cities and counties. In some instances this review preceded the manager's review and recommendation. In others, the manager's recommended budget included a dollar amount for all nonprofit organizations, and an advisory committee recommended how to divide up that total. Advisory committee recommendations were used by only 14 percent of the cities but by 32 percent of the counties. They were more likely to be used in larger jurisdictions.

Department recommendations were less commonly part of the process. Department staff recommended nonprofit funding in only 15 percent of the cities and 25 percent of the counties, with some greater involvement by departments in the largest jurisdictions.

The researchers who conducted the survey of practices in 1990–91 combined these two kinds of review into one category. They reported citizen or staff advisory reviews in 25 percent of the cities and 40 percent of the counties.

Table 6. Funding Arrangements

	% Contracts Only	% Contracts & Grants	% Grants Only
Cities	13	24	62
Counties	21	40	40

For fiscal year 1997–98, governing board members also frequently recommended funding of nonprofit organizations—in 67 percent of the cities and 60 percent of the counties. There was no systematic variation by size of jurisdiction.[6]

Nonprofit organization representatives often presented their case for funding in person, either before an advisory committee or before the governing board itself. More than half of the cities and almost half of the counties reported such procedures. Again, there was no systematic variation by jurisdiction size.[7]

Funding Arrangements

After funds have been allocated to nonprofit organizations through adoption of the budget ordinance, the local government may enter into contracts with the nonprofits so funded, or it may award grants to them without entering into a formal contract. Some local governments use both arrangements, entering into contracts with some nonprofits and awarding grants to others.

A contract specifies what the nonprofit will deliver to the public in return for government financing. It also may specify how services are to be delivered and how the nonprofit is to operate and report.

In the case of grants, a funding application usually indicates what the nonprofit organization intends to do with government funds. However, the government awards a grant without executing a formal contract to that effect.

In fiscal year 1997–98, most North Carolina cities (62 percent) used grants exclusively to fund nonprofit organizations. Only 13 percent relied solely on contracts (see Table 6). In contrast, more than half of the counties used contracts, 21 percent of them using contracts exclusively and another 40 percent using both grants and contracts. Just 40 percent used grants alone.[8]

Local government finance experts often suggest that governments use contracts as a standard practice when funding nonprofits. For example:

> *Even if a city does not submit budget requests from community agencies to the same procedural and review requirements as it does other budget requests, city contributions to any such agency should occur only under a written contract between the city and the agency.*[9]

Accountability Requirements

Cities and counties use a variety of methods to hold nonprofit organizations accountable for the public funding they receive (see Table 7). Often they require some sort of report. The report may focus on the organization's finances, its programs, or both. In general, reporting requirements are more stringent when the funding is provided under a contract, but there are many exceptions. No systematic information is available on the quality of the reports or the use that local governments make of them.

Reports, of course, are after-the-fact accounts of what has happened. Another way in which local governments can seek accountability is by requiring nonprofit organizations to let government officials know in advance how they intend to spend the dollars that the governments provide. One way to seek advance control of spending is to require nonprofits to submit budgets outlining how they intend to spend the funds they receive. In 1997–98, counties were somewhat more likely than cities to require that nonprofits submit budgets. Further, cities and counties both were more likely to require that nonprofits submit a project budget with applications for contracts than they were to ask for a budget with requests for grants.

Another sort of advance control of spending is even more direct. A local government can "preaudit" nonprofit organizations' expenditures of the funds the

government provides. That is, before the nonprofit organization spends government funds, it must submit a payment order and supporting documentation to the government providing the funds. This alternative is rarely used. Only 4 of the 180 North Carolina jurisdictions reporting accountability procedures (1 city and 3 counties) reported preauditing nonprofits' 1997–98 spending.

Preauditing appears to have been more common a few years ago. Twenty of 99 jurisdictions reported preauditing nonprofit organizations' expenditures in 1990–91. That included 16 of 56 cities and 4 of 43 counties. The difference is mostly in city practices. In 1997–98, less than 1 percent of the cities preaudited nonprofit expenditures, compared with 29 percent in 1990–91. For counties, however, the difference over that period is insignificant: 6 percent in 1997–98, compared with 9 percent in 1990–91. These data suggest that preauditing is not a popular accountability mechanism for local government funding of nonprofits, and may, in fact, be waning in popularity.

Most local governments also required some kind of report about how nonprofit organizations used the government funds they received. The most nearly standardized of the required reports is the annual audit. About two-thirds of the cities and counties required annual audits from nonprofits with which they had contracts in 1997–98. Annual audits were much less commonly requested when the funding was provided as a grant, especially by cities.

Requiring audited reports was about as common at the beginning of the 1990s as it was at the end. Thirty-eight percent of the cities and 58 percent of the counties required audited financial statements for 1990–91.

CHRIS SEWARD / THE NEWS & OBSERVER

Meals on Wheels distributes several hundred meals a day to people who cannot shop or cook for themselves. Above, an elderly woman gives an appreciative hug to her delivery person.

Unaudited financial reports are required by some local governments, usually (but not always) in place of audited financial statements. About a quarter of the cities and counties required them for contracts, and about a sixth required them for grants in 1997–98. In 1990–91, in contrast, 32 percent of the cities and 28 percent of the counties required unaudited financial reports. This suggests there may have been a slight decrease in the practice during the 1990s.

Annual reports also are commonly required. In 1998 more than half of the cities and almost half of the counties required annual reports from the nonprofit organizations they funded through contracts. For funding through grants, about half the counties required annual reports, but only a quarter of the cities did.

Quarterly reports were less commonly required than annual reports. A few jurisdictions, though, required both.

Program evaluations also were less commonly required. Slightly more than a quarter of the counties required them for contracts, and fewer than 20 percent of the cities did so. Program evaluations were even less often required for grants.

More research is needed to determine how useful these practices are for assuring local governments that nonprofit organizations are spending government

TABLE 7. LOCAL GOVERNMENT ACCOUNTABILITY REQUIREMENTS

	# Funding This Way	% Budget with Applic.	% Preaudit	% Annual Audit	% Unaudited Fin. Rept.	% Annual Rept.	% Quarterly Repts.	% Prog. Eval.
Cities								
For contracts	48	52	2	71	29	58	21	19
For grants	110	32	1	17	17	28	3	15
Counties								
For contracts	32	63	3	66	22	47	32	28
For grants	42	52	7	48	17	45	14	17

funds appropriately. Each one can require additional administrative work for the nonprofit and also for the local government, if its staff is to make effective use of the information. How cost-effective are various financial control arrangements? What sort of information is needed to track and evaluate service delivery? How will that information be used in making decisions about the program or its funding? Those are questions that local government officials and nonprofit leaders in each community need to answer in terms of their particular situation. In fact, a mix of clearance and reporting mechanisms may well be needed, depending on the services being funded, the amount of funding involved, and the extent of other, less formal exchanges of information among nonprofits, the people who receive their services, and government officials.

Conclusion

Cities and counties in North Carolina work with nonprofit organizations in many different ways. The data reported in this article sketch the extent and the variety of those relationships but not their nature and government officials' and nonprofit leaders' understanding of them (for a discussion of the latter two subjects, see the article on page 33). In some cases, nonprofits may be seen as integral partners in the government's design or delivery of public services. The frequency of joint planning, program development, and service coordination suggests that such an interpretation may fit some government–nonprofit organization relationships. So does the inclusion of nonprofit funding in the manager's recommended budget to the governing board.

However, the data also indicate that many local governments budget differently for nonprofit organizations than they do for their own departments. Advisory committee reviews of nonprofits and other community programs, for example, suggest that nonprofit programs follow an approval process outside, and not necessarily in concert with, regular departmental planning of public programs. The even more common practice of nonprofit funding recommendations by governing board members suggests that nonprofit funding may sometimes be more responsive to political support for the nonprofit than to consideration of how well its programs help local government deal with public problems of high priority on the jurisdiction's regular agenda.

Are local governments buying specific public services from nonprofit organizations? Are they working with nonprofits to assess public needs and design services to address them? Or are they funding nonprofits to design and carry out public services within fairly broad limits? The answer seems to be all of the above. More study is needed to assess how extensive each kind of relationship is, and more conversation among government and nonprofit organization leaders is needed to sort out what they expect of existing relationships and what sorts of relationships they might prefer to serve the public best.

Notes

1. Evan M. Berman & Jonathan P. West, *Public-Private Leadership and the Role of Nonprofit Organizations in Local Government: The Case of Social Services*, POLICY STUDIES REVIEW, Spring/Summer 1995, at 235; Wolfgang Bielefeld et al., *National Mandates and Local Nonprofits: Shaping a Local Delivery System of HIV/AIDS Services*, POLICY STUDIES REVIEW, Spring/Summer 1995, at 127; Carol J. De Vita, *Nonprofits and Devolution: What Do We Know?* in NONPROFITS AND GOVERNMENT ch. 6 (Elizabeth Boris & C. Eugene Steuerle eds., Washington, D.C.: Urban Inst. Press, 1999); Robert C. Lowry, *Nonprofit Organizations and Public Policy*, POLICY STUDIES REVIEW, Spring/Summer 1995, at 107; Richard P. Nathan & Associates, *The "Nonprofitization Movement" as a Form of Devolution*, in CAPACITY FOR CHANGE? THE NONPROFIT WORLD IN THE AGE OF DEVOLUTION 23 (Dwight F. Burlingame et al. eds., Indianapolis: Indiana Univ. Center on Philanthropy, 1996); Lester M. Salamon, AMERICA'S NONPROFIT SECTOR: A PRIMER (New York: Foundation Center, 1999); Stephen Rathgeb Smith, *Government Financing of Nonprofit Activity*, in NONPROFITS AND GOVERNMENT ch. 5; Dennis R. Young, *Complementary, Supplementary, or Adversarial? A Theoretical and Historical Examination of Nonprofit-Government Relations in the United States*, in NONPROFITS AND GOVERNMENT ch. 1.

2. This article was developed as a part of the Project to Strengthen Government-Nonprofit Relationships, a collaboration of the Institute of Government of The University of North Carolina at Chapel Hill and the North Carolina Center *for* Nonprofits with funding from the Jessie Ball duPont Fund. The authors also acknowledge the support of the UNC–CH Master of Public Administration (MPA) Program through the research assistance of MPA students Mary Blake, Caryn Ernst, Abby Llewellyn, and Francesca O'Reilly, and the valuable comments and suggestions of Lydian Altman-Sauer, Maureen Berner, Margaret Henderson, John Rubin, and Jack Vogt.

3. IRS tax status does not determine whether a nonprofit organization can receive local government funding. Local governments also contract with nonprofits falling under other sections of the U.S. Internal Revenue Code (such as chambers of commerce) and with for-profit businesses. The issue is whether the organization is receiving the funds in order to do work that the local government is authorized to provide. The relevant statutes are N.C. GEN. STAT. § 153A-449 for cities and § 160A-20.1 for counties.

4. This figure is likely to represent almost all the funding of nonprofit organizations by these cities. City departments do not have authority to award contracts to nonprofits, but in some municipalities the manager or the council approves agreements through which funds budgeted to departments are paid to nonprofits to deliver services that carry out the departments' programs.

5. Charles K. Coe & A. John Vogt, *How North Carolina's Cities and Counties Budget for Community Agencies*, POPULAR GOVERNMENT, Winter 1993, at 25, 26. All remaining 1990–91 data cited in this article are from the same source, at pages 26 and 28.

6. This was so except for the very smallest jurisdictions, almost all of which reported that governing board members suggested nonprofit organizations for funding. Many of the smallest jurisdictions do not employ managers, of course, and board members frequently play a greater role in budget preparation.

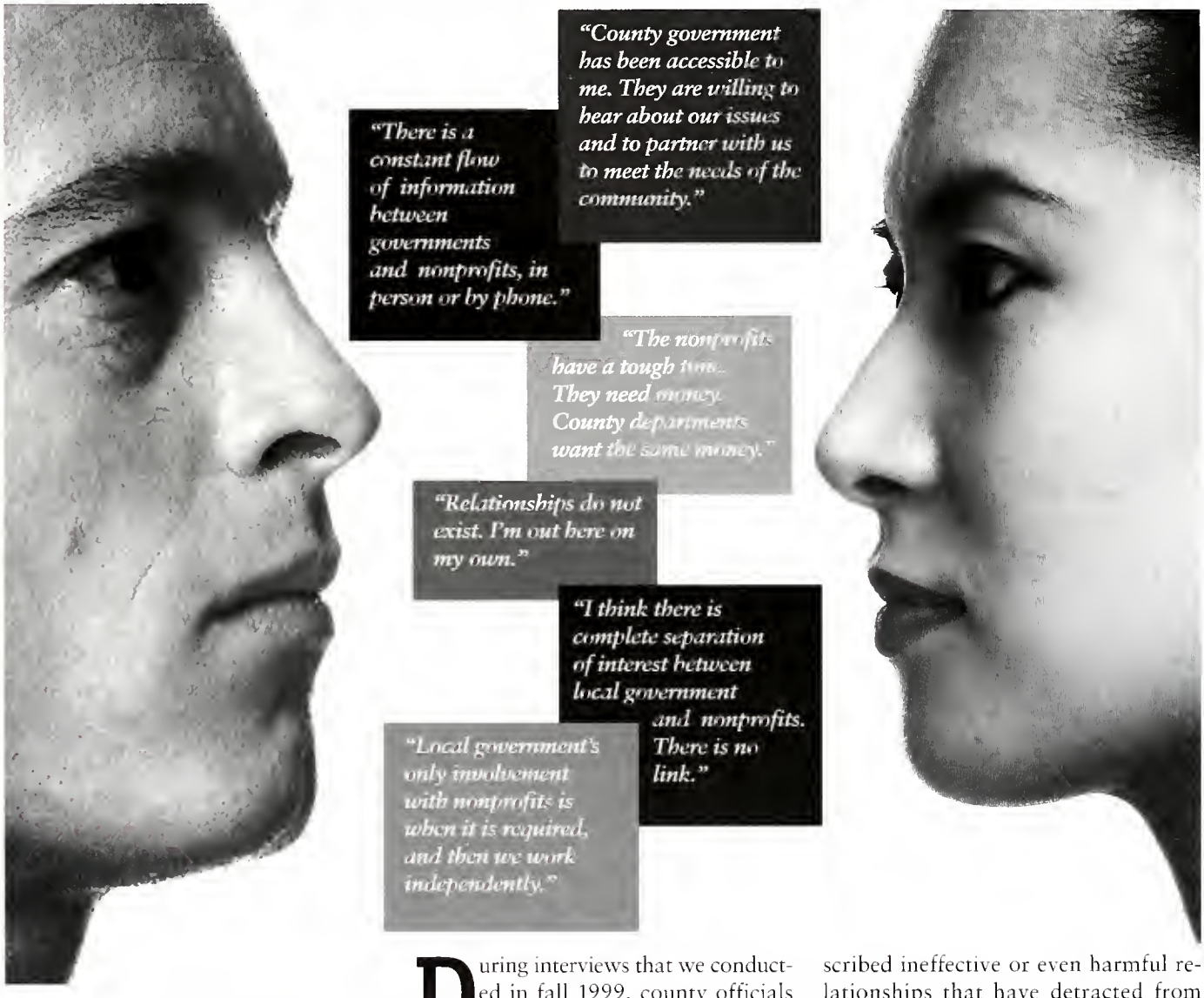
7. Coe and Vogt did not report on the extent of governing board recommendations or in-person presentations, so no comparison with fiscal year 1990–91 practices is possible.

8. Again, these figures relate only to nonprofit organizations funded directly through the annual budget. Nonprofits also may receive funding from a department's budget allocation when department officials decide to purchase services from a nonprofit vendor. Contracts are most commonly used in this latter situation by county human services departments.

9. A. John Vogt, *Budget Preparation and Enactment*, in MUNICIPAL GOVERNMENT IN NORTH CAROLINA ch. 13, at 354 (David M. Lawrence & Warren Jake Wicker eds., 2d ed., Chapel Hill: Institute of Government, The University of North Carolina at Chapel Hill, 1996).

Strengthening Relationships between Local Governments and Nonprofits

Lydian Altman-Sauer, Margaret Henderson, and Gordon P. Whitaker



Altman-Sauer and Henderson are Institute of Government research associates on the Project to Strengthen Government-Nonprofit Relationships. Whitaker is an Institute faculty member who specializes in local public management, including government relations with nonprofit organizations. Contact them at lydian@carolina.net, mindfullconsult@mindspring.com, and whitaker@iogmail.iog.unc.edu.

During interviews that we conducted in fall 1999, county officials and nonprofit organization leaders described their relationships in all the ways highlighted above. Some reported that they have developed ways to bring together the strengths and the resources of local governments and nonprofits to serve their communities more effectively than either can alone. Others reported little or no interaction between governments and nonprofits. Still others described ineffective or even harmful relationships that have detracted from their ability to serve the public. In some places the descriptions varied widely, and it was difficult to realize that government and nonprofit organization leaders were speaking about the same relationship.

But governments and nonprofit organizations might improve many areas of life in a community if they worked together more effectively. This article ex-

plores that possibility and the challenge that acting on it presents to local leaders in both the public and the nonprofit sector. Further, it identifies obstacles to effective working relationships and suggests ways in which the two sectors can reduce or overcome those obstacles.

This article is based on interviews with more than forty government and nonprofit organization staff members in seven counties in central North Carolina. Human services agencies were targeted because North Carolina county governments are most likely to fund nonprofits in that area of service. (For a further discussion of counties' relationships with nonprofits, see the article on page 25.) The two largest counties, Wake and Mecklenburg, were excluded from the study as atypical. The remaining ninety-eight counties were categorized as small, medium, and large on the basis of population, and counties from each category were chosen for study. The study's geographic reach was limited initially by budgetary constraints and later by the traumatic impact of Hurricane Floyd on eastern North Carolina—no counties from the far western or far eastern areas of the state were included. However, the seven counties in the study included both urban and rural areas that represented a diversity of cultural and political traditions.

During the study we asked local government and nonprofit organization staff to assess the nature of their work with each other—how they interacted, what worked well in their relationships, and what factors limited their relationships. We also asked them to describe the differences in decision-making or operational style and the ways in which those differences affected working relationships. Finally, we asked about specific changes that local government and nonprofit organization staff would like to see in relationships or in the way in which services were delivered in their counties. In every community where we interviewed, respondents candidly shared their views.

The study was part of a larger project (supported by a grant from the Jessie Ball duPont Fund) to identify and create ways to help nonprofit organizations and government agencies work together to serve the public more effectively.

The Opportunity: Working Together

People working in local governments and nonprofit organizations often serve the same clients, address the same community problems, and have the potential to support each other. As one local government department director noted, having relationships with nonprofits is "the nature of the business. We share the same clients."

Although the perspectives of the two sectors are frequently different, they are potentially complementary. One county manager explained, "The county manager and board of commissioners don't have enough understanding about what a nonprofit is and how they work. Everyone involved needs to know where there are similarities and differences, and where there is common ground." A nonprofit crisis agency director put it this way: "I want to help make a difference for people who need assistance. I'm willing to speak out on their behalf. If I have a relationship with the county, then there is a better chance the board of commissioners and staff will listen to what I have to say. I need to gain their trust and then speak out!"

Local government officials have important resources for dealing with public problems. Through their budget allocations, they can direct public funds to particular community needs. Through their authority to pass ordinances, they can regulate and shape behavior in the community.

Nonprofit organizations also have important resources. In addition to having expertise and insight gained through focusing on specific client groups or public issues, they frequently can mobilize volunteers and private donations more effectively than governments can. Also, they often can act with greater speed and flexibility than government agencies can in responding to new situations or trying out new programs.

The Challenge: Finding Effective Ways to Work Together

The challenge for the two sectors is to find ways to work together that permit them to fulfill their unique responsibilities while complementing each other's work. One nonprofit organization director clearly articulated this viewpoint when he said, "Local government wants nonprofits to look where they can make a contribution. They don't want nonprofits to interfere or compete with local government; they want nonprofits to provide complementary services."

The differences between the two sectors, however, represent sources of tension that respondents in each of the seven counties mentioned in one form or another. Differences in organizational structure and culture, for example, can create obstacles. Local governments are large organizations with complex structures. Further, they must solicit and consider the viewpoints of many citizens, and that can be a cumbersome process. On the other hand, nonprofit organizations tend to be small agencies with simple structures. They can be attractive to local governments as a way to try out new or pilot programs because they can react and implement services quickly. As one nonprofit director noted, "Most nonprofits are very small. Their decisions are made by one to two people and the nonprofit board of directors. In local government there are a large number of people to make decisions." Yet this same characteristic—the ability to move quickly—can be perceived by local governments as a liability because all the necessary viewpoints may not be considered. A government manager noted, "Nonprofits want to move fast, with complete freedom and no input from us."

Nonprofit organizations generally focus on a particular set of issues. Local governments focus on a broad range of interests and concerns affecting the entire community. These divergent perspectives are understandable and natural, but they often create a difference that can become irreconcilable. One local government manager recounted an instance in which the board of commissioners denied a request by a local nonprofit for matching funds: "The commissioners and the manager want to know that matching money will benefit all the citizens of this county, not just a specific target group."

Close collaboration is one way to strike the balance. The information that we obtained in our interviews suggests that nonprofit organization/local government projects are most effective when

ROBERT MILLER / THE NEWS & OBSERVER

A pilot program cosponsored by Smart Start, Wake Tech, and Project Enlightenment offers continuing education to child-care workers. Above, two Wake Tech graduates use a day-care center's water table.

all the following conditions are present:

- The focus is on one issue.
- The goals are clearly defined.
- Representatives of all the stakeholders are involved in the problem-solving process.
- Time and resources are available to support planning.

Respondents frequently noted two specific examples of successful collaboration: Smart Start and Work First. Smart Start is a state-funded program that channels funds to local partnerships of nonprofit organizations. The partnerships design and offer services that prepare children to be successful in school. Work First, funded by the state and federal governments, brings public, private, and nonprofit organizations together to develop methods for moving families off welfare and into work. By requiring various community members with a stake in the programs' success to participate in planning, and by tying this participation to funding, both of these programs have forced and encouraged innovative problem solving and collaboration within communities. In some places they represent a community's first successful broad-based collaboration on a human services issue. In one county the executive director of Smart Start was the only nonprofit organization director who could accurately describe any of the county's procedures or report having a close relationship with the county manager.

Yet this highly effective, intense process requires strong involvement by a broad range of stakeholders. Other important concerns may be ignored because such a response can be directed at only one or two issues at a time. Before embarking on such efforts, communities should be sure that members can commit the time and the energy necessary to get results. Collaboration is not always appropriate or cost-effective.

Because developing and maintaining true collaboration is so difficult, it is important for both nonprofit organizations and local governments to explore just how closely they want and can afford to work together. Both can benefit from a joint evaluation of their current connections and a joint decision on how connected they would like to be, along which dimensions, and on what issues. Furthermore, both must identify, evaluate, and set limits on the resources they are willing to expend to work more closely together.[1]

There is no one *right* relationship between governments and nonprofit organizations. Indeed, within a community the relationship may shift with different issues or events. Also, there is likely to be variation among communities. Each has to decide for itself how to achieve the most effective balance of independence and connection. The optimal degree and type of connection depend on each community's situation.

Four Obstacles

From our interviews we identified four obstacles to effective relationships between local governments and nonprofits: different perceptions about the same situations; a lack of understanding of each other's work; the effects of the economic and cultural base of a community on the style of communication, information sharing, and decision making; and an imbalance of power in relationships.

Different Perceptions

Some respondents in the same county described their system in very different ways and evaluated it quite differently. Perceptions differed about relationships among organizations and individuals, particularly about how, and how well, the human services programs, agencies, and funders worked together. Local government employees in one county remarked, "[I]t is a community norm that you collaborate and get along, or you don't survive." Nonprofit organization directors in that same community stated, "On the surface there appears to be a spirit of cooperation, but it is only on the surface. We work together but I don't trust them."

The individuals and the organizations that held the most control over decisions and activities expressed satisfaction with the relationships and did not express awareness that other stakeholders might not share their opinion. Not surprisingly, the individuals and the organizations that had unmet needs or had been excluded from discussions, processes, or decisions held more negative views of the relationships between local governments and nonprofit organizations. One local government employee stated that department heads assessed whether a nonprofit's service was consistent with county goals and worthy of support. Several nonprofit directors in the same community expressed the wish that the decision-making process in local govern-

ment would "utilize more voices from the people we are trying to serve" and that the human services system itself would be representative of its citizens.

Lack of Understanding

Throughout the interviews we found a fundamental lack of understanding on the part of each sector of how the other sector operated and what motivated it to act the way it did. Such a lack of understanding is a barrier to effective working relationships. A nonprofit organization director expressed this frustration by saying, "I'm not so sure how much the board of commissioners really knows about what individual nonprofits *do* or the *value* of what nonprofits do or the *financial efficiencies* of nonprofits."

Many nonprofit organization directors do not understand how local government works. During interviews, some admitted that they were uninformed about government structure, regulation, and operations. One stated, "I don't know a lot about county government. I don't feel I fit in the way I should." As a consequence, she could not see any benefit from working with local government.

Nonprofit organization directors expressed specific concern about these matters:

- Government eligibility standards for certain programs
- Funding patterns, sources, and designations
- Jurisdictional responsibility (whether a service was a city or a county function)
- Organizational structure (whom to contact at a city or a county government to discuss problems)
- Local government decision making (especially about funding) and ways to become involved in it[2]

Similarly, some career local government employees do not fully understand how nonprofit organizations operate. When asked what limited relationships with them, one county manager replied that neither the county staff nor the board of commissioners had enough understanding about what a nonprofit was and how it worked. Many government officials failed to identify any of the auxiliary benefits of having strong local nonprofits, such as involvement and motivation of community volunteers, provision of needed services, employment of local residents, or infusion of dollars into the community from foundation, state, and federal sources. One elected official in a position to see human services from many perspectives admitted that he did not fully understand the work of nonprofits: "I sit on nonprofit boards, but I don't really know much about their operations."

Respondents often did not understand the distinction between local government and nonprofit organization status for some services, such as aging, transportation, and child-care subsidies, or for some organizations, such as the county extension service or the council of governments. Because people did not understand the structural differences, they held incorrect perceptions of how or why those agencies received government support or why they provided the services that they did. Respondents were aware only that some nonprofit organizations received much more financial support from the county than others did. They did not understand that a particular contract for services might be tied to a mandated funding stream and that if the particular type of nonprofit did not provide the service, the county would have to hire the staff to do so. The perception of favoritism created a barrier to effective working relationships.

Similarly, some local government officials did not perceive nonprofit organizations as providing public service. In one county a local government administrator lamented, "[The] board of commissioners does not understand nonprofits. They think the nonprofits are trying to get something for nothing. The commissioners don't see the end product or results from funding nonprofits." Commonly held views included "nonprofits are only interested in getting government money" and "nonprofits speak for special inter-

THOMAS BABB / *THE NEWS & OBSERVER*

Museums are among the many nonprofit organizations supported by local governments. At the North Carolina Museum of Natural Sciences, a volunteer talks to schoolchildren.

Suggested Practices

What Nonprofit Organizations Can Do

✔ Inform local governments about your progress throughout the year, not just during the funding-application process.

- Send out regular newsletters and reports.
- Use formal and informal opportunities to talk about current events.
- Talk about more than funding requests and immediate crises.
- Invite a government official to serve on your board.

✔ Pay attention to the workings of the whole community, not just your client population.

- Create and maintain your organization's place in the fabric of the whole community.
- Be a steady presence as a knowledgeable resource on your issue.
- Stay informed on current events and personalities in your community.
- Regularly attend and contribute to community meetings, even if there is no obvious or immediate benefit to your organization.

✔ Be as financially responsible and accountable as possible, and present evidence of your accountability to the public.

- Share information about completed audits or review processes.
- Regularly update and make available all policies and procedures.
- Institute and faithfully practice financial checks and balances.
- Invite professional financial managers to serve on oversight committees.

✔ Reinforce your organization's trustworthiness by presenting a reliable, professional image.

- Convey consistent messages about your organization's mission, goals, and activities.
- Dress and speak in the professional norms of your community.
- Pay attention to detail, such as using the same logo, typeface, and format on all organization documents.

✔ Help your community learn how to deal with issues of concern to your organization that are overwhelming, unattractive, or frightening to the general public.

- Identify the source of any reluctance to address your issue.
- Devise strategies to retain the community's attention.
- Minimize any superficial characteristics that could be used as an excuse to discount your organization's work.
- Communicate in a style and a manner that demonstrate to people how to talk about your issue with respect.

What Local Governments Can Do

✔ Minimize the frustration, the misunderstanding, or the mistrust that nonprofit organizations experience during the budget-planning stages by sharing information about funding—for example:

- The amount of money available
- Government priorities

continued on page 38

ests." Both observations are shortsighted and can limit opportunities for the two sectors to work together.

Effects of the Community's Economic and Cultural Base

Cultural differences among clients, staff, volunteers, and elected officials can impede communication as they try to work together in their community. Each of those involved may hold very different philosophies about how much information should be shared, how decisions should be made, how conflicts should be resolved, and so forth. Differing viewpoints may be deep-seated, originating from the intrinsic culture of either the individual or the organization.

Respondents gave the following examples of populations within their communities that have comparatively different styles of communication:

- Long-term residents/natives and newcomers
- Independent farmers and employees of organizations
- Private- and public-sector employees
- Community-based small businesses and national corporations

Such cultural differences become more obvious as members of these populations move into decision-making roles. For instance, independent farmers may be used to being sole decision makers, not needing to collaborate with others. One manager noted, "People in a rural community have a history of working independently. This probably contributes to local government's lack of understanding of the respective functions and operations of nonprofits, and vice versa." On the other hand, employees of large organizations have experience working on and through committees or layers of management. They may be more likely to effect change by working together. When these two styles exist on the same board or across boards, the resulting differences in communication, information sharing, and decision making can impede effective working relationships.

Imbalance of Power

The imbalance of power implicit in local government/nonprofit organization relationships can limit the honesty and the thoroughness of information sharing,

Suggested Practices *(continued)*

- The application and evaluation processes
- The expectations for reporting and accountability

✔ Coordinate nonprofit organizations' funding applications and presentations to the local government with those to the United Way or other local private-sector grant makers to minimize duplication of efforts and to improve communication among local funders.

✔ View problems or needs as belonging to the whole community, not just to a nonprofit organization.

- Recognize that the clients of nonprofit organizations are community members deserving of resources.
- Express appreciation for the missions of nonprofit organizations.

✔ Acknowledge nonprofit organizations as serious businesses.

- Recognize the value that professional, paid employees can bring to an organization.
- Support nonprofit organizations in their efforts to strengthen professionalism internally.
- Consider the economic impact that the payrolls and the programs of nonprofit organizations can have on the local economy.

What Nonprofits and Local Governments Can Do Together

✔ Share information, both during and outside day-to-day working relationships.

- Sponsor an annual human services forum that includes government and nonprofit organization staff, elected officials, and community volunteers.
- Undertake joint strategic planning efforts, especially around specific issues, such as homelessness or juvenile delinquency.
- Consider locating services that serve the same population at the same site.
- Hold regular meetings among nonprofit organization directors, county department heads, and/or program staff of both organizations.

✔ Share resources.

- Invite staff of the other type of organization to participate in training opportunities that your organization typically offers.
- Offer to share expertise by providing training to or by meeting with staff of the other type of organization.
- Invite program staff from other organizations to meet in your facility.
- Provide or share office, training, or meeting space.
- Make it possible for your staff to serve on community boards, committees, and task forces.
- Make second-hand furniture or equipment available for others to use.

✔ Jointly develop clear, written guidelines about mutual expectations and work to be accomplished together.

✔ Recognize that you can be each other's best support for understanding and handling the stress associated with working in the public sector. You are dealing with similar challenges.

problem solving, and discussion. Nonprofit organizations are almost always at a disadvantage in this imbalance. An imbalance of power is a particularly challenging barrier to overcome because, whether real or perceived, it creates an unsafe environment for honest communication. People who perceive that they have *less power* may not think that they can offer their opinions or insights without negative repercussions. People who have *more power* may not realize that others feel open communication to be unsafe or undesirable.

Respondents expressed various reasons for perceiving that they lacked power:

- The formal hierarchy within or among organizations
- The funding relationships between grantors and recipients of financial support
- The informal positions within the larger community
- Racial, gender, or ethnic differences

In a county where the local government leaders expressed great satisfaction with their relationships with nonprofit organizations, several nonprofit directors painted a very different picture. One noted, "There are many cooperative and collaborative efforts in the community. From our perspective, local government has the purse strings and is in control." Another commented, "Even when local government is wrong, you have to smile and agree with them so you can get the money. I am always aware that I am 'one down' in the collaborative relationship."

The Lesson: Frequent and Accurate Communication

The lesson that we draw from the data is that frequent and accurate communication can establish greater trust in others' motivations and competence. In communities with fewer opportunities for sharing information, either formally or informally, there were wider gaps in the content of information that people held. Where these gaps existed, there was more negative speculation about how and why things happened. Fewer people described the existence of a mutually supportive work culture across sectors. The respondents who expressed the most dissatisfaction or uncertainty about processes and

relationships in their communities tended to be those who reported indicators of professional or personal isolation.

One local government department director expressed an intention to keep the department from developing relationships with nonprofit organizations because of local politics: "Nonprofits have a lack of desire to find common ground. I stay focused and limit the amount of potential catastrophe." This person cited frustration and difficulties with a "confrontational" nonprofit director, whose organization "stays away from the table so they won't have to hear 'they're no good' or 'it can't be done.'"

In our interviews the nonprofit director who was the object of these comments talked about the differences between the nonprofit organization's approach and that of the aforementioned county department: "We feel there is a value in involving citizens in the decision-making process. We need them to be engaged in the process and to have the process accessible to them. I think our approach is different than that of local government or the other nonprofits."

Some respondents expressed awareness only of their own functions and direct relationships as staff members of nonprofit or government organizations, not of their role in their county's human services system as a whole. Individual staff members of both local governments and nonprofits can become focused primarily on their own clients, staff, mandates, programs, challenges, and so on. The respondents who did understand how the various stakeholders interacted, however, expressed respect for the challenges inherent in their different roles and responsibilities.

Nonprofit organization directors want feedback about their programs, services, and administrative practices from the local government. They may interpret the lack of feedback from the local government as a lack of support or appreciation for their organizations' services and mission. Similarly, local government officials want to hear about the progress of nonprofits throughout the year, not just during the funding-application process.

A sector's never receiving or providing feedback, formally or informally, can create inaccurate and unfortunate impressions. For example, in one community the local government manager specifically cited and praised the work of a particular nonprofit organization. During our interviews with the director of that organization, however, she expressed concern that the local government ignored her work and her agency: "We are not even a blip on their radar screen."

Our interviews suggested a variety of practices that could open up communication between government and nonprofit organization leaders and staff (see the sidebar on page 37). The communities in which we found these practices were better able to have a variety of effective working relationships between government agencies and nonprofits.

Adequately managing the tensions between nonprofit organizations and local governments can be a challenge for any community. Like any segment of the population, people in the public sector represent a broad diversity of expertise, professional skills, styles of interpersonal communication, and level of passion for work. This diversity may be viewed either with suspicion and rigidity or with celebration and possibly amusement. By using their differences constructively, people who work in local governments and nonprofit organizations can draw on each other's strengths to help compensate for their weaknesses. Together they may be able to serve the public more effectively than either sector could alone.

Notes

1. The Institute of Government is developing an evaluation tool to help communities assess local government/nonprofit organization relationships. The tool, tentatively titled the Scale of Connection, offers six dimensions of relationships for consideration: decision making, funding process, shared resources, resource development, accountability, and staffing requirements. For more information, contact Lydian Altman-Sauer at lydian@carolina.net or Margaret Henderson at mindfullconsult@mindspring.com.

2. To answer these questions, we have written TWENTY QUESTIONS NONPROFITS OFTEN ASK ABOUT WORKING WITH LOCAL GOVERNMENT, which is available for purchase through the Institute of Government's Publications Department. For more information, contact Katrina Hunt at khunt@iogmail.iog.unc.edu.

JOHN ROTTET / *THE NEWS & OBSERVER*

Communities in Schools is a nonprofit organization that connects community resources with students and their families. For example, the organization works with local businesses to find tutors for elementary school children.

Smile, Red-Light Runners . . . You're on Automated Camera

Randy Jay Harrington

The Insurance Institute for Highway Safety estimates that more than 800 deaths occur annually as a result of red-light running (RLR).[1] Further, the Insurance Institute reports that the number of fatal crashes at intersections with traffic signals (signalized intersections) increased by 24 percent from 1992 to 1997. A 1990–91 study of urban police reports indicated that 22 percent of all urban crashes resulted from the drivers' running traffic controls. Of these, 24 percent involved their running red lights.[2]

With police resources declining in relation to the number of vehicles on the road, local officials around the country have begun exploring the use of cameras to detect traffic signal violators.[3] In 1993, New York City became the first U.S. jurisdiction to place cameras at selected intersections in order to reduce RLR. Now, close to fifty cities in ten states operate 250 cameras in programs enforcing the requirement that drivers stop at red lights (red-light photo enforcement programs, for short). Camera suppliers predict that the number of operating cameras will double annually.[4]

Arizona and California are the only states that regard the camera-caught red-light violation as a criminal moving violation, subject to fines and license and insurance points. For points to be assessed, which could lead to revocation of a person's license and higher insurance rates, cities in Arizona and California must clearly identify the driver. Therefore they must produce a frontal photo of the driver and identify the license plate.

The author, a 2000 graduate of UNC–CH's Master of Public Administration Program, is a Presidential Management Intern with the U.S. Department of Transportation. Contact him at rjharrington@hotmail.com.

At a Safe*Light intersection in Charlotte, a camera mounted atop a 15-foot pole is activated when a vehicle runs a red light.*

RANDY JAY HARRINGTON

Other states, including North Carolina, authorize municipalities to impose a civil penalty only, with no assessment of driver's license points. Therefore they require photographic verification of the license plate only, usually from the rear of the vehicle. In North Carolina a civil penalty citation is issued to the vehicle's registered owner. If it is not paid, the municipality issuing the citation may institute a civil action to collect the penalty.

This article summarizes the experience of Charlotte, North Carolina, in establishing and operating a red-light photo enforcement program, which it calls *Safe*Light Charlotte. The program appears to have reduced the number of RLR violations and associated crashes at *Safe*Light intersections.[5] The city also has gained revenue from increased enforcement of red-light violations.

At each of Charlotte's intersections using red-light photo enforcement, called *Safe*Light intersections, there are at least two electric-wire loops per lane of travel buried in the pavement, a 35-millimeter camera atop a 15-foot pole, and a control box near the sidewalk that coordinates the traffic light with the loops and the camera. When the light turns red and after a .03-second grace period, the system becomes active. Once it does, a vehicle traveling more than 15 miles per hour triggers the loops (located directly in front of the painted, white stop bar).[6] This causes the camera to take a rear photograph of the vehicle showing the light in its red phase and verifying that the light turned red before the vehicle entered the intersection. A second rear photograph then captures the vehicle in the intersection during the red phase.[7]

What led Charlotte to pursue red-light photo enforcement?

Charlotte's ranking among North Carolina urban jurisdictions for number of vehicle crashes rose from eighteenth in 1996 to first in 1998.[8] In 1996, 34 percent of Charlotte's vehicle crashes were attributed to RLR.[9] Further, 49 percent of the crashes at the 179 signalized intersections on Charlotte's 1998 list of high-accident locations (HAL)[10] resulted from RLR.[11]

Citizen concern matched crash statistics. Seventy-six percent of the city's residents believed RLR to be a major safety hazard,[12] and the media reported alarming incidences of RLR in the city.[13] RLR even became a frequent topic on morning radio.

The automated camera takes two photos of the vehicle and the light, one before the vehicle enters the intersection, and one after. Above, the second photo, with relevant data superimposed: "17 04" is the time of the violation; "28-08-98," the date it occurred; "0.67," the elapsed time between the two photos; "R 0 57," the total elapsed time of the red phase at the time of the second photo (here, 5.7 seconds); "014," the violation number on the camera film; and "V = 30," the vehicle speed.

The statistics and the public concern drew the attention of Charlotte's city council, police department, and department of transportation. Led by the latter, these groups determined that photo enforcement offered the most effective and easiest method for reducing RLR and RLR–associated crashes.

How did Charlotte obtain authorization for its plan?

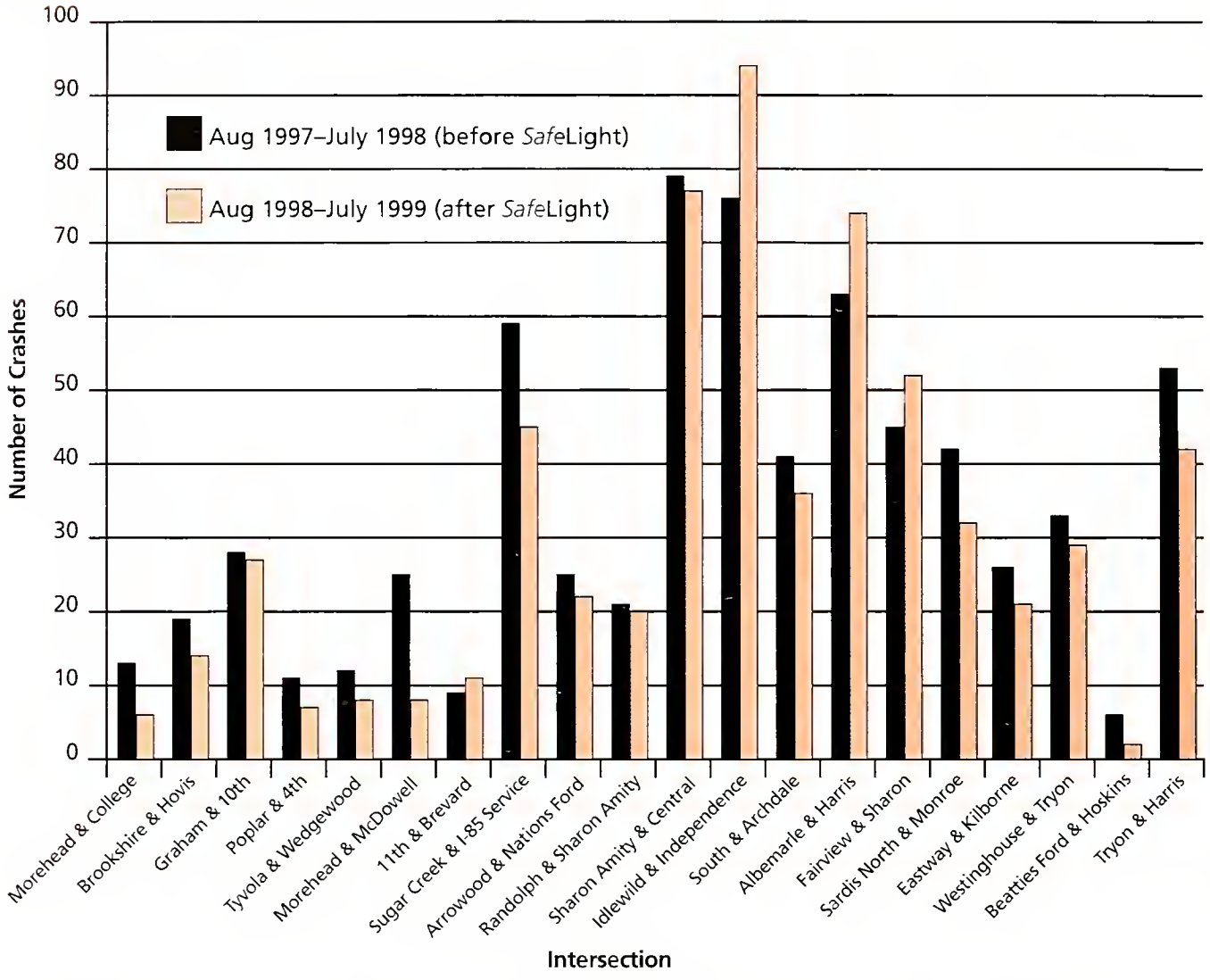
Before engaging in red-light photo enforcement, jurisdictions must obtain enabling legislation from both the General Assembly and their local governing bodies. In 1997 the General Assembly passed Section 160A-300.1 of the North Carolina General Statutes (hereinafter G.S.). The initial version of the statute applied to Charlotte only, authorizing the city to engage in this form of enforcement activity if the activity also was authorized by local ordinance and complied with the requirements set forth in the statute (described later). Since then, the statute has been amended to extend this authority to several more cities and towns, as well as to clarify the requirements for use of the technique.[14]

To obtain state and local authorization, Charlotte took seven steps. First, managers in the Charlotte Department of Transportation (CDOT) obtained the approval of their department head. Second, CDOT secured approval of the city manager. Third, CDOT presented the city council with statistics and information about the need for red-light photo enforcement. The council unanimously supported the idea and authorized CDOT to pursue state approval. Fourth, before approaching the legislature, CDOT worked with AAA Carolinas and local media to educate the public on the reasons for pursuing red-light photo enforcement (as opposed to increasing traditional enforcement). Fifth, CDOT took the proposal to Mecklenburg County's state legislative delegation. Sixth, the delegation presented the proposal to the General Assembly, which approved it through enactment of G.S. 160A-300.1. Finally, the city council enacted an ordinance establishing the *Safe*Light program. Two years elapsed from inception of the idea to operation of the first camera.

What concerns were expressed about red-light photo enforcement?

Several issues framed the debate about red-light photo enforcement. Most nota-

Figure 1. **Crashes at *Safe*Light Intersections**



Source: Data from CHARLOTTE DEP'T OF TRANSP., *SAFE*LIGHT PROGRAM, YEARLY ACCIDENT STATISTICS @ *SAFE*LIGHT INTERSECTIONS (AUG.–JUL.) 1 (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999).

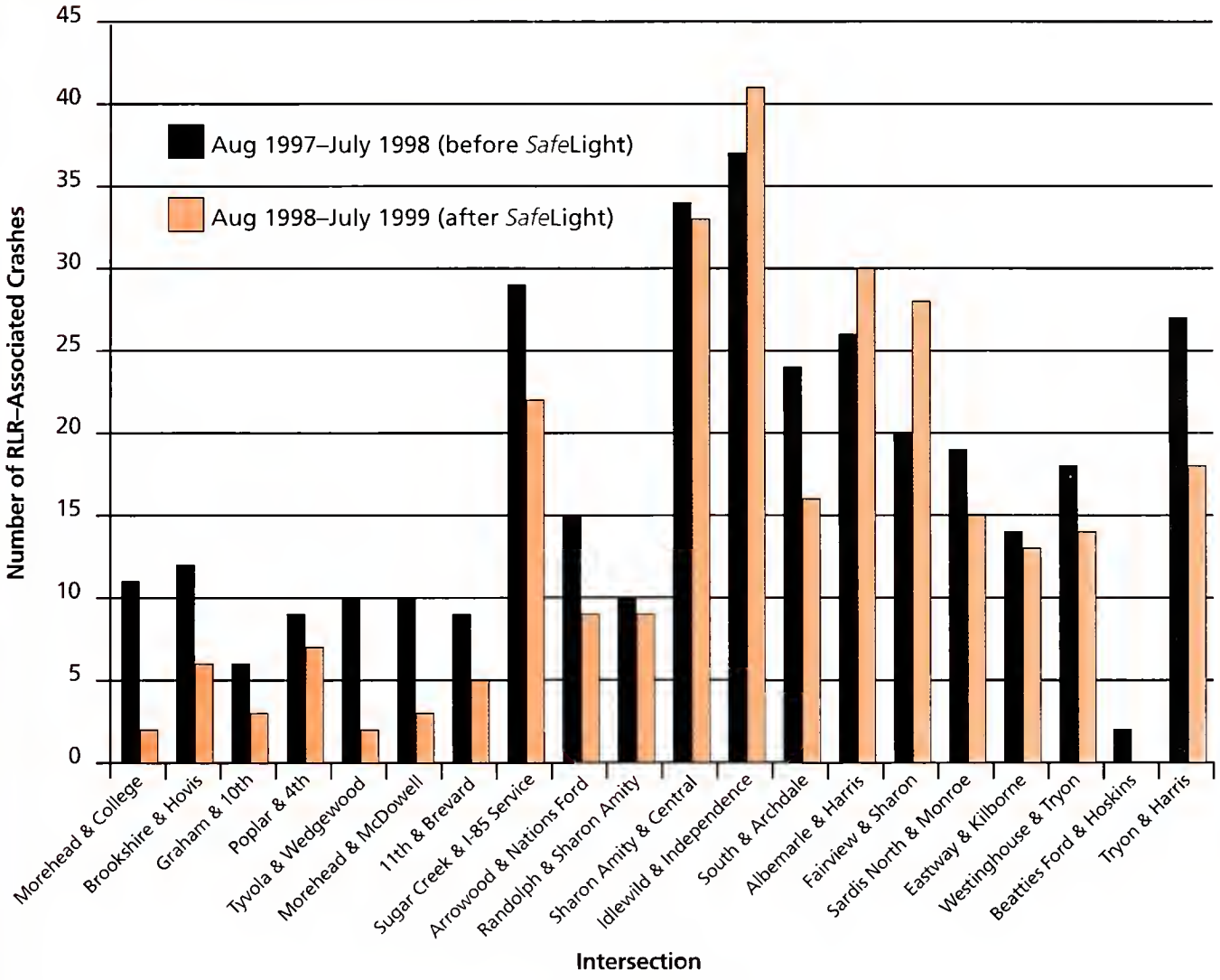
bly, critics argued that the cameras would invade people's privacy. Concerns about rising RLR violations overrode this argument,[15] although the legislature included a requirement that signs be posted at all camera-equipped intersections notifying approaching motorists of the cameras.

Critics also argued that government should not penalize the vehicle's owner and assess insurance points against him or her without proof that the owner was driving the vehicle. In response, the legislature classified an RLR violation detected by photographic means as a civil nonmoving offense, punishable by a $50 penalty only. In contrast, if RLR is detected by a law enforcement officer, it is a moving violation, carrying a $25 fine, $90 in court costs, and an assessment of points against the driver's license. A vehicle's owner may avoid liability for the civil nonmoving violation by signing an affidavit identifying the actual driver at the time of the violation.

In North Carolina, criminal motor vehicle fines go to the schools.[16] However, because camera-caught RLR is characterized as a civil offense, the *Safe*Light program is able to retain all the resulting revenue.[17] In response to the concerns of some citizens that the program was simply a government money-making scheme, Charlotte officials emphasized that the program's goal was to reduce the number of crashes and deaths at intersections, thus making Charlotte a safer community. The monetary penalties were to serve as a mechanism for altering people's driving habits.[18] Charlotte officials also emphasized that the police did not possess the resources to increase traditional enforcement at Charlotte intersections. Cameras, in contrast, could monitor intersections twenty-four hours a day, seven days a week.

Charlotte contracted out the daily operations and management of the *Safe*Light program, and some critics argued that the involvement of a private, for-profit company created a conflict of interest. Camera proponents countered that the public-private partnership had the benefit of imposing no new tax burden while producing additional local government revenue. Proponents also argued that any potential abuses would

Figure 2. **RLR–Associated Crashes at *Safe*Light Intersections**



Source: Data from CHARLOTTE DEP'T OF TRANSP., *SAFE*LIGHT PROGRAM, YEARLY ACCIDENT STATISTICS @ *SAFE*LIGHT INTERSECTIONS (AUG.–JUL.) 2 (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999).

be held in check by a neutral, third-party appeal process.[19]

How has Charlotte implemented the SafeLight *program?*

Lockheed Martin IMS (IMS) operates the *Safe*Light program under a contractual arrangement. One city employee oversees the program and conducts its public relations. IMS employs nine people full-time and two people part-time to operate the project.[20] Technicians service the cameras daily and remove the used film. The film is then scanned into a computer and analyzed to verify picture integrity and license plate numbers. A verified license plate number is then checked against North Carolina Division of Motor Vehicle (DMV) records to identify the vehicle's owner.[21] After IMS obtains a positive DMV verification, it mails a citation to the owner. The citation includes an explanation of the violation, a description of the location of the intersection, a photo of the vehicle's license plate, and a photo of the vehicle in the intersection during the light's red phase.

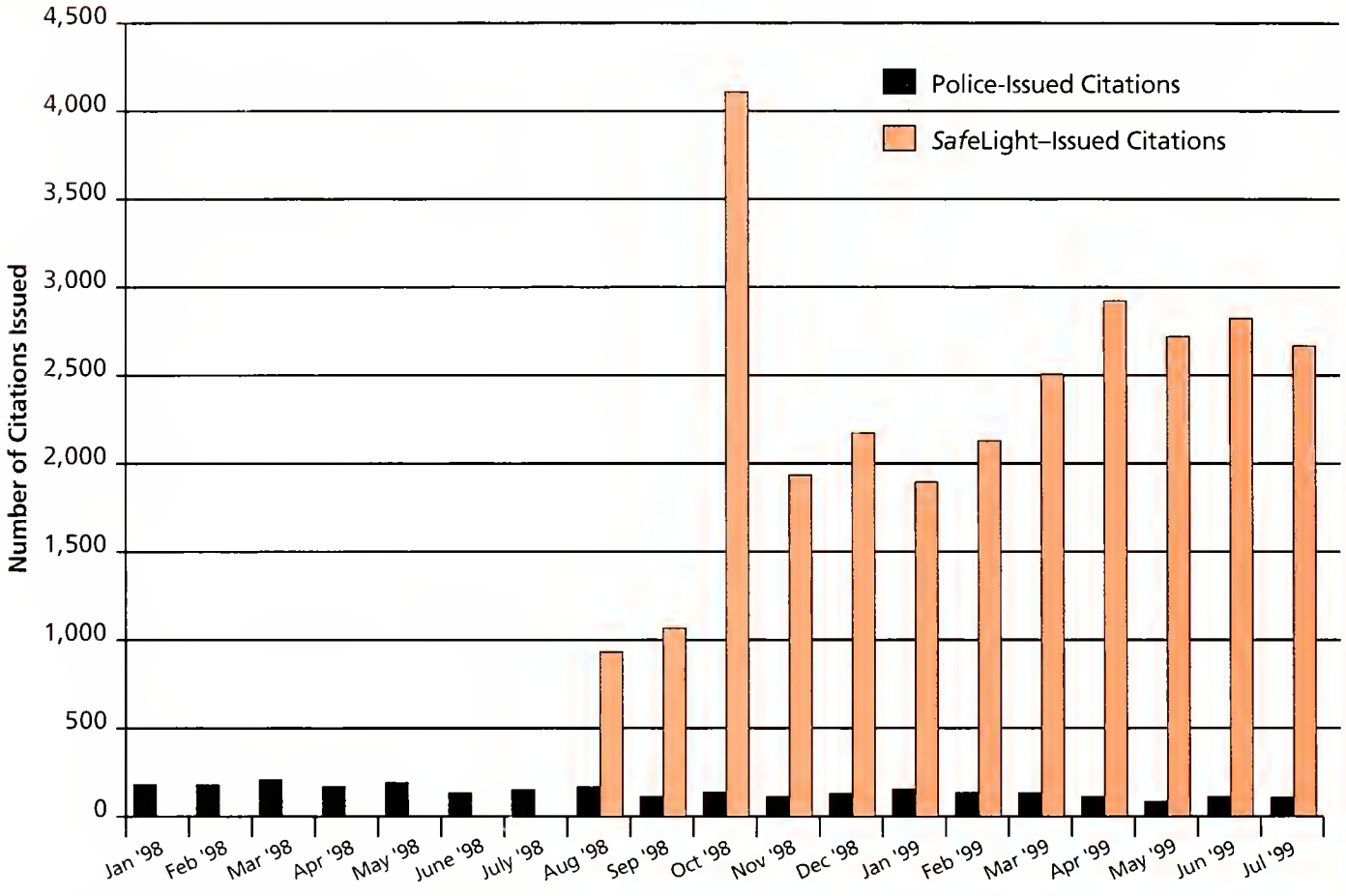
The steps just described occur within forty-eight hours of the violation. If the violator fails to respond, IMS issues a Failure to Comply notice. If the violator still fails to respond, IMS turns the citation over to a collection agency, and an attorney sends a notice to the vehicle's owner.

What have been the results?

*Safe*Light began issuing citations in August 1998. By October 1998 the number of *Safe*Light intersections had grown from 2 to 22. By April 2000, 32—now 30 because of removal of two cameras during road construction—of Charlotte's 572 intersections were equipped to use cameras. Twenty intersections have permanent cameras, while two cameras rotate among the remaining 10 intersections. *Safe*Light reports the following results for August 1997 through July 1999 (except as noted):[22]

- Citywide, the number of crashes increased 5.7 percent.
- *Safe*Light intersections experienced a 9.1 percent decrease in the number of crashes (see Figure 1).
- The number of crashes on approaches toward the camera decreased 27.1 percent.

Figure 3. **RLR Citations Issued by Police vs. *Safe*Light Program**



Source: Data for police-issued citations from Personal Interview with Capt. Larry Blydenburgh, Head of Highway Interdiction and Traffic Safety, Charlotte Police Dep't (Jan. 21, 2000); data for *Safe*Light–issued citations from CHARLOTTE DEP'T OF TRANSP., SAFELIGHT FIRST-YEAR REPORT 5 (Charlotte, N.C.: *Safe*Light Program, CDOT, Fall 1999).

- The number of RLR–associated crashes decreased 19.3 percent at *Safe*Light intersections (see Figure 2, page 43).
- Severity per crash decreased 27.1 percent at *Safe*Light intersections.[23]
- At eight *Safe*Light intersections studied in August 1999, RLR decreased 93.0 percent.[24]

Spillover effects on non–*Safe*Light intersections have not been determined. However, examination of statistics on a random sample of three *Safe*Light and three non–*Safe*Light intersections suggests that Charlotte has yet to experience a reduction in RLR–associated crashes at non–*Safe*Light intersections.

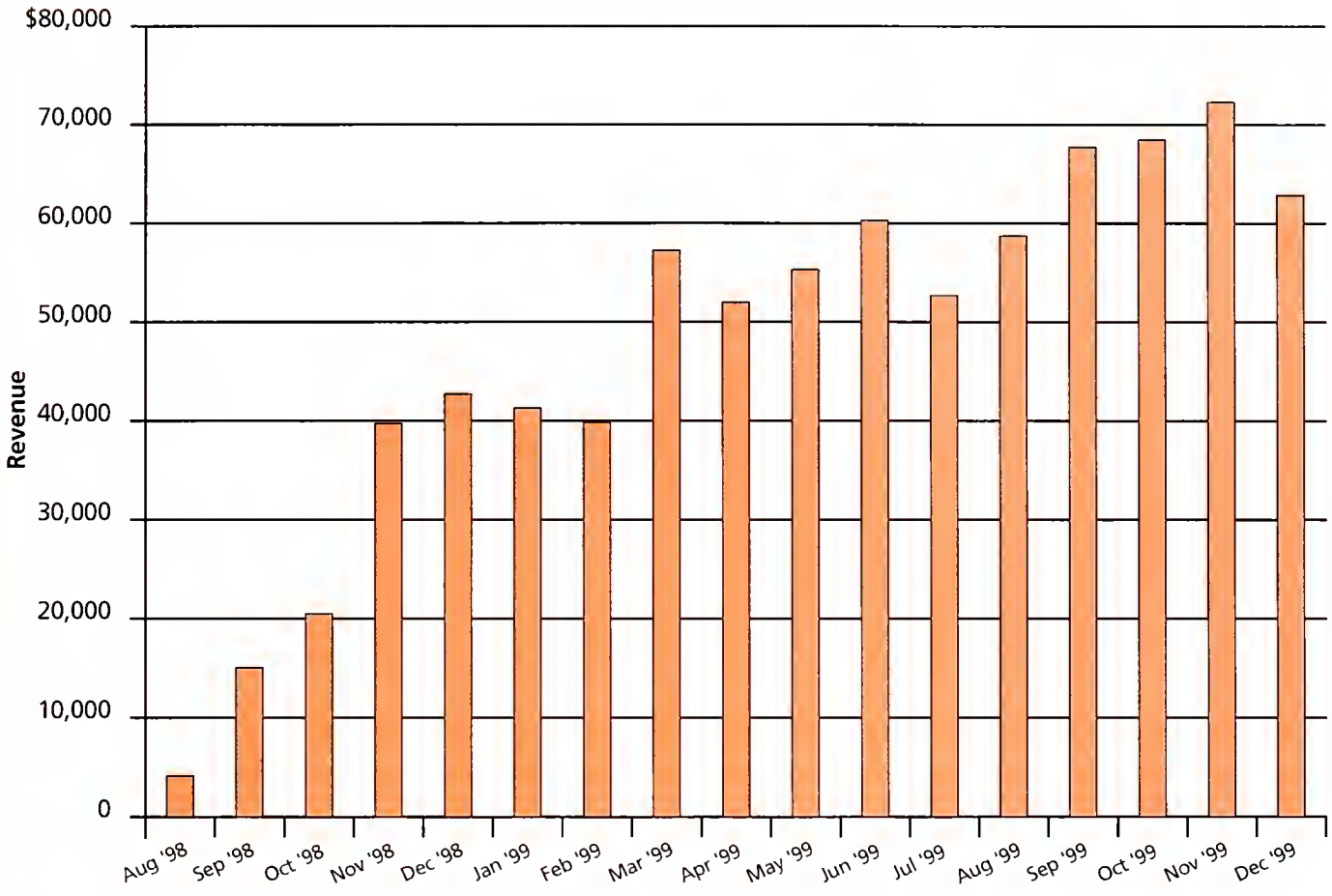
*Safe*Light has produced a far higher number of citations than has traditional enforcement. In 1999 the city processed 1,420 citations issued in the traditional manner. In *Safe*Light's first year of operation (August 1998–July 1999), it issued 27,870 citations (see Figure 3). The recipients of 369 of these citations filed for an administrative hearing, and 62 (17 percent) had their citations dismissed. In the second year of operation, 46,199 citations were issued. Four hundred thirty-four recipients filed for an administrative hearing, and of those, 68 (16 percent) had their citations dismissed.

According to the Charlotte Police Department's traffic unit direcror, it takes an officer twelve to thirteen minutes to apprehend a red-light violator and issue an RLR citation.[25] At *Safe*Light intersections alone, the decrease in the number of crashes allowed the Charlotte police to save, or reallocate, approximately fifty-nine enforcement hours during the program's first year. A Charlotte police official predicts that, in the long run, fewer intersection crashes will reduce workloads and allow officers to address other police needs.[26]

The *Safe*Light program is financed entirely by citation revenue. Under the contractual arrangement, Charlotte receives $22 (44 percent) of each $50 RLR citation.[27] The rest goes to the contractor, IMS. During *Safe*Light's first year, penalties totaled $1.39 million. IMS collected $1.06 million of that. It received $611,522, Charlotte $447,835. *Safe*Light collected $2.1 million in penalties during the 1999–2000 operating year.[28] Of this amount, $889,108 went to Charlotte, $1.2 million to IMS. After boosting the number of cameras from two to twenty-two in October 1998, Charlotte's first-year monthly revenue averaged $52,787 (see Figure 4).

The capital costs to implement the *Safe*Light program are considerable but are borne by the contractor. (It would be

Figure 4. **Monthly *Safe*Light Revenue Received by Charlotte ($22 of Every $50 Penalty)**



Source: Charlotte Dep't of Transp., *Safe*Light Program, *Safe*Light Monthly Deposit Tracking Sheet (internal document, obtained from Brett Vines, *Safe*Light Director, Jan. 15, 2000).

incorrect, however, to say that there were no costs to Charlotte to implement the *Safe*Light program. Significant staff time was required from CDOT and the City Attorney's Office to get the program established and operating.) According to IMS, the equipment and installation costs per intersection in Charlotte average $72,000, which includes a $50,000 camera. IMS also spent approximately $55,000 in *Safe*Light's first year to mail notices to violators. IMS's mailing costs rose to approximately $86,000 in fiscal year 1999–2000 because of an increase in the volume of citations. Additionally, personnel, data center, and other administrative expenses exceed $1 million annually.[29]

According to IMS's project manager of municipal services in Charlotte, the company has yet to turn a profit. But considering that it received $611,522 in its first year of operation (1998–99) and $1.2 million in its second year, and it estimates receipts of $1.6 million in 2000–2001,[30] the project manager expects *Safe*Light to become profitable within the next couple of years.[31]

Other red-light photo enforcement programs in the United States have experienced similar reductions in RLR and associated crashes.[32] The U.S. Federal Highway Administration predicts that RLR camera programs will result in a reduction in RLR violations of 20 to 60 percent.[33]

However, caution is in order when interpreting violation and crash results. First, the number of violations may or may not be related to the number and the severity of collisions. Second, the results cited may or may not be the result of controlled, scientific studies.[34] Although initial results are promising, concrete findings require additional data and analysis over longer periods of time.

What recommendations do research and experience suggest for other local governments?

The literature on RLR and interviews with CDOT officials, IMS personnel, and the Mecklenburg County legislative delegation suggest that photo enforcement can reduce RLR violations and associated crashes. Following are eight recommendations for optimizing red-light photo enforcement programs:

1. *Impose a civil penalty only.* Imposing driver's license points on drivers who run red lights requires positive driver identification and thus the need for an additional, frontal camera. Sun visors and rear-view mirrors, sun glare, and the wearing of sunglasses and

In the first year of operation, Charlotte's SafeLight intersections experienced a 9.1 percent reduction in the number of crashes overall, a 19.3 percent reduction in the number of RLR–associated crashes, and a 27.1 percent reduction in the number of crashes on the camera approach.

RANDY JAY HARRINGTON

Electric-wire loops embedded in the pavement, two per lane of travel, trigger camera operation when a vehicle passes over them at a speed greater than 15 miles per hour during the light's red phase.

hats hamper positive driver identification. Research indicates that RLR citation rates (the number of citations issued to violators in relation to the total number of recorded violations on film) vary from 13 to 30 percent in jurisdictions that classify RLR as a moving violation.[35] Such low rates reduce a program's ability to achieve its goals and support itself financially.[36] Therefore, North Carolina's enabling legislation, which authorizes local governments to impose only a civil penalty for RLR violations detected by camera, appears to be the most prudent course.

2. *Conduct a public information and education campaign.* An effective campaign is critical to obtaining support for a red-light photo enforcement program and for the program's continued success. In fact, the U.S. Federal Highway Administration identifies this as the most critical issue.[37] Citizen support can be garnered through early and frequent dissemination of information regarding the need for automated enforcement and the results of automated camera use. Media support also can be pursued as a means of gaining citizen support. As a program's first camera-equipped intersections begin operation, an element of the public information and educarion campaign might be a period of one or two months during which only warning tickets are issued.

3. *Consider contracting out program operation.* I was not able to determine as part of my study whether contracting out the *Safe*Light program has been wiser financially for Charlotte than operating it in-house. Clearly, though, the public-private partnership has produced revenue for Charlotte. Contractual arrangements have two major benefits. First, contractors specializing in this field enjoy technological advantages over most local government staffs. Second, contracting simplifies abandonment should the program fail to achieve expected results.[38]

4. *Choose appropriate intersections.* Initially, Charlotte placed all its cameras at HAL (high-accident location) intersections. However, Charlotte learned that HAL intersections are not necessarily intersections that experience high numbers of red-light runners. In fact, research only tentatively supports using HAL intersections as camera locations; more definitive research is needed. Other factors to consider when choosing a red-light camera inrersection include number of right-angle crashes, police reports, citizen complaints, number of RLR violations, and specific intersection studies. Also, planners should keep in mind that RLR problems may be the result of poorly designed intersections, poor sight lines to the traffic light, or poor timing of traffic-light phases. Interestingly, research warns against relying on traffic volume to determine camera locations. Instead, potential camera locations should be chosen on the basis of the estimated or actual number of RLR violations occurring at particular intersections.[39]

5. *Use more than the legally required number of roadway signs to notify the public of red-light photo enforcement.* Although Charlotte's cameras monitor only one approach to an intersection, all four approaches at a *Safe*Light intersection display warning signs within 300 feet of the intersection. This is mandated by the statute authorizing red-light photo enforcement.[40] Additionally, Charlotte posts warning signs on major roadways at the city limits. Howard County, Maryland, posts warning signs on freeways and other major highways leading into the county but not at specific intersections. New York City posts no warning signs. Charlotte's and Howard County's approach of posting signs at the city and county limits would seem to increase the visibility of the program and to encourage safe driving habits at all intersections, rather than at the camera-equipped intersections alone. North Carolina cities and towns should post warning signs according to the requirements of G.S. 160A-300.1 and consider posting additional signs at major streets leading into the city or the town, to increase the program's visibility and its spin-off value in reducing RLR violations and associated crashes at noncamera intersections.

6. *Prepare for success.* Charlotte administrators recommend performing extra homework, including site visits to other operating programs, to learn about camera technology and its record of success and failure. Elected officials, citizens, and city supervisors are more apt to support a red-light photo enforcement program when time is taken to inform them of the requirements and the potential results of such a tool.[41]

7. *Budget time wisely.* There will be significant time requirements in three areas. First, some time will have to be spent at the state legislature: legislative approval is not pro forma. Second, marketing the idea to the media and the public should be a continuing effort. Third, sufficient time should be allowed for the process of requesting proposals from potential contractors. Charlotte's process took nine months and proved challenging. The process should allow extra time for planners to understand and evaluate the proposals and for prospective contractors to demonstrate their experience in operating a fully functioning system.

8. *Consider using digital cameras.* Digital cameras offer significant benefits over 35-millimeter cameras. They capture higher resolution photos and allow photos to be sent electronically from the intersection's camera directly to the program's main computers. This eliminates the need for film removal and developing, and that in turn reduces time and personnel needs.

Conclusion

Since the introduction of red-light photo enforcement in the United States in 1993, the technology has shown promising results in reducing the number of RLR violations and associated crashes. Additionally, jurisdictions have gained valuable experience operating successful programs. In the first year of operation, Charlotte's *Safe*Light intersections experienced a 9.1 percent reduction in the number of crashes overall, a 19.3 percent reduction in the number of RLR–associated crashes, and a 27.1 percent reduction in the number of crashes on the camera approach. A study of eight *Safe*Light intersections revealed an RLR reduction of 93 percent. Without reliance on additional taxpayer support, Charlotte received $447,835 in new revenue from penalties assessed during the program's first year. Initial results suggest that the *Safe*Light program is achieving its goal of creating a safer Charlotte by improving highway safety at signalized intersections.[42]

Notes

1. Richard Retting, *Automated Enforcement of Traffic Laws*, TR [Transportation Research] News, Mar.–Apr. 1999, at 15, 29.

2. Insurance Inst. for Highway Safety, *Safety Facts* (last modified Dec. 16, 1999), available at http://www.highwaysafety.org/safety_facts/qanda/rlc.htm.

3. M. Freedman & N. Paek, *Enforcement Resources Relative to Need: Changes during 1978–89* (Arlington, Va.: Insurance Inst. for Highway Safety, 1992).

4. *Cameras Working against Light-Runners*, USA Today, Jan. 13, 2000, available at http://www.usatoday.com/news/washdc/ncswed03.htm.

5. Charlotte Dep't of Transp., *Safe*Light Program, Yearly Accident Statistics @ *Safe*Light Intersections (Aug.–Jul.) (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999) (hereinafter cited as *Safe*Light Statistics).

6. The use of a minimum travel speed helps eliminate potential false-positive violations associated with left-turn-only lanes, right-turn-on-red maneuvers, and emergency vehicles. Some intersections in Charlotte require a higher threshold speed (16 or 18 miles per hour) to activate the cameras.

7. On the first photo, the computer prints the date, the time, the elapsed time since the beginning of the red phase of the light, the duration of the yellow phase, the violation number, the lane number, and the code for the intersection's location. On the second photo, the computer prints the date, the time, the elapsed time between photos, the total elapsed red-light time at the time of the second violation photo, the vehicle's speed, and the violation number.

8. North Carolina Dep't of Transp., Traffic Crash Facts 1996, at 106; Traffic Crash Facts 1997, at 156; Traffic Crash Facts 1998, at 156 (Raleigh, N.C.: NCDOT, 1997, 1998, 1999).

9. Personal Interview with Brett Vines, City of Charlotte Special Programs Manager/ *Safe*Light Director (Dec. 16, 1999).

10. The HAL list, produced by the Charlotte Department of Transportation, ranks an intersection on the basis of its dangerousness compared with that of all other intersections in Charlotte. Three factors are considered: (1) the number of crashes occurring in a three-year period at the particular intersection, (2) the total volume of traffic entering the particular intersection in a twenty-four-hour period, and (3) the severity of the injuries sustained for each crash occurring at the particular intersection. The three factors are used to calculate the Estimated Property Damage Only (EPDO) index. The resulting index determines the ranking of the HAL intersections. The HAL list includes the 221 most unsafe intersections.

11. City of Charlotte, N.C., *Safe*Light *Program* (last modified Dec. 31, 1999), available at http://www.ci.charlotte.nc.us/citransportation/programs/ltfacts.htm.

12. Charlotte Dep't of Transp., *Safe*Light First-Year Report 4 (Charlotte, N.C.: *Safe*Light Program, CDOT, Fall 1999). MarketWise, Inc., conducted a survey of Charlotte residents in fall 1997, before implementation. MarketWise also conducted a post-implementation survey of 404 Mecklenburg County residents in August 1999. This later study indicated that 78 percent supported the *Safe*Light program, while only 8 percent opposed it. Thirty-six percent expressed the opinion that the program had changed driving habits of people in general, at intersections.

13. Dianne Whitacre, *Drivers Flouting the Rules, City Tries to Stem Rise in Accidents* [press release], Charlotte, N.C.: *Safe*Light Program (last modified Nov. 29, 1997), available at http://www.ci.charlotte.nc.us/citransportation/programs/press25.htm.

14. The North Carolina General Assembly has approved camera use for the following cities and towns: Charlotte, Cornelius, Fayetteville, Greensboro, Greenville, High Point, Huntersville, Lumberton, Matthews, Pineville, Rocky Mount, and Wilmington. The General Assembly has denied camera approval to Chapel Hill and Raleigh. *See* S.L. 2000-37 (H 1553).

15. For example, North Carolina State Senator T. LaFontine Odom, Sr. (D–Mecklenburg, Iredell, and Lincoln counties) noted that "it's the responsibility of city government to enforce [the] law[,] . . . and cameras seemed to work best." Sen. T. LaFontine Odom, Sr., Re: Charlotte's *Safe*Light Program, e-mail to the author (Jan. 13, 2000).

16. N.C. Const. art. IX, § 7; Cauble v. City of Asheville, 314 N.C. 518, 336 S.E.2d 59 (1985).

17. The legality of cities retaining such revenue has yet to be challenged in court. Randy Jones, former manager of public service for CDOT, noted that cities probably could not afford the high costs of camera programs if they could not offset costs with penalty revenue. Personal Interview (Jan. 19, 2000).

18. Vicki Hyman, *Charlotte Program Credited with Reducing Crashes 27 Percent*, Raleigh News & Observer, Oct. 24, 1999, at

26A. Brett Vines, *Safe*Light director, noted in Hyman's newspaper article that Charlotte spends its *Safe*Light–generated revenue on pedestrian safety, public safety campaigns, and sidewalk construction. According to the 1999–2000 Safe*Light Annual Report*, about $400,000 of *Safe*Light revenue will fund major safety-improvement projects at local schools, including road widening and turn-lane construction. The report is available at http://www.charmeck.nc.us/citransportation/programs/report2.htm#Revenue.

19. The appeals process includes an administrative hearing before an independent hearing officer and an appeal through the Superior Court of Mecklenburg County.

20. Lockheed Martin IMS employs its own project manager to oversee its Charlotte operation and work closely with the city's *Safe*Light Director.

21. The system is able to obtain motor vehicle owner records from virtually all fifty states. For rental cars, IMS contacts the rental car company to obtain the renter's name and mailing address. If it cannot obtain the name, it sends the violation to the rental car company to forward to the driver. According to IMS, most rental car companies are cooperative, helpful, and supportive.

22. Charlotte Dep't of Transp., *Safe*Light Program, *Safe*Light Statistics.

23. The EPDO index determines estimated crash severity. See note 10.

24. City of Charlotte, *Safe*Light First-Year Report 10. A test conducted by CDOT before installation of cameras examined eight intersections for one twelve-hour segment (7:00 A.M. to 7:00 P.M.). The pretest determined that motorists ran red lights 875 times. A test conducted after camera installation revealed that the number of violations at the same eight intersections decreased to 58 over a twenty-four-hour period.

25. Court appearance time and other forms of down time were excluded from the calculation. Traditional enforcement by a single officer also can be difficult and dangerous. The officer must be able to see the vehicle, the stop bar, and the traffic signal clearly at the same time. In apprehending a red-light violator, the officer may have to pursue the violator through the red phase, thus endangering himself or herself, other motorists, and pedestrians. Karl A. Passetti, *Use of Automated Enforcement for Red Light Violations*, in Compendium: Graduate Student Papers on Advanced Surface Transportation Systems, at J-5 through J-6 (College Station: Texas Transp. Inst., Aug. 1997).

26. Captain Larry Blydenburgh, head of Highway Interdiction and Traffic Safety for the Charlotte Police Department, estimated that an officer spends one hour performing professional duties at a typical RLR crash scene and filing subsequent paperwork. Personal Interview with Capt. Larry Blydenburgh, Head of Highway Interdiction and Traffic Safety, Charlotte Police Dep't (Jan. 21, 2000). This article does not examine the monetary costs associated with traditional red-light enforcement in Charlotte. However, a 1997 report found that in Howard County, Maryland, traditional, team-oriented red-light enforcement cost $25.40 per citation. Passetti, *Use of Automated Enforcement*, at J-30.

27. If it issues fewer than 35,000 citations per year, IMS receives $28 of each $50 citation. If it issues more than 35,000 but fewer than 60,000 citations per year, it receives an extra $4 per citation (applicable only to the number between 35,000 and 60,000). If it issues more than 60,000 citations per year, it earns an extra $1.50 per citation (applicable only to the number over 60,000). If the penalty is not paid or appealed within twenty-one days, a $50 late penalty is charged. IMS collects $23 of each $50 late penalty, CDOT $27. However, if a violator does not pay until a third notice is sent, IMS receives $76 of the total $100 charge, and CDOT $24.

28. Charlotte Dep't of Transp., *Safe*Light Program, City of Charlotte *Safe*Light Program Summary of Revenues and Expenditures (Charlotte, N.C.: *Safe*Light Program, CDOT, Dec. 1999) (hereinafter cited as Revenues and Expenditures).

29. Terence J. Lynam, Director, Customer and Constituent Relations, Lockheed Martin IMS, Re: Charlotte Red Light Program, e-mail to the author (Dec. 21, 1999).

30. Charlotte Dep't of Transp., *Safe*Light Program, Revenues and Expenditures.

31. Personal Interview with Johnnie Fogg, Project Manager of Mun. Serv., Lockheed Martin IMS (Dec. 16, 1999). According to John Veneziano, Director of Public Works for Fairfax, Virginia, the city's three-camera Photo Red Light Program returned a profit after fifteen months. As of December 1999, Fairfax had paid $831,380.00 in total contractual costs, and the city's net revenue totaled $131,819.70. Fairfax contracts out the intersection installation, camera maintenance, and film developing. The police department reviews the photo violations, mails the citations, handles customer service, and supports the appeals process. Personal Interview with Veneziano (Jan. 24, 2000). I did not audit IMS's cost figures. However, the approximate $50,000 purchase price for each of Charlotte's Gatsometer 35-millimeter cameras is consistent with prices charged for such high-speed/high-resolution cameras. Research by Hummer et al. found that in Howard County, Maryland, installation of the pavement loops and the poles for the camera cost between $3,000 and $7,000. Significant price differences can exist among types of cameras (35-millimeter and digital) and types of vehicle detectors (air tubes, inductive loops, earth magnetic loops, piezoelectric strips, video loops, and laser). Joseph E. Hummer et al., Traffic Signal Enforcement Innovations for North Carolina 24 (Report submitted to the North Carolina Governor's Highway Safety Program, Raleigh: North Carolina State Univ., Oct. 29, 1999).

32. Fairfax, Virginia's violation rate across camera *and* noncamera intersections had decreased by approximately 40 percent one year after photo enforcement began. Richard A. Retting et al., *Evaluation of Red Light Camera Enforcement in Fairfax, Va., USA*, ITE [Institute of Traffic Engineers] Journal, Aug. 1999, at 30. In Oxnard, California, the violation rate across camera *and* noncamera intersections decreased by approximately 42 percent. Richard A. Retting et al., *Evaluation of Red Light Camera Enforcement in Oxnard, California*, 31 Accident Analysis and Prevention 169 (1999). New York City experienced a 38 percent reduction in RLR violations. United States Dep't of Transp., Synthesis and Evaluation of Red Light Running Automated Enforcement Programs in the United States, FHWA-IF-00-004 at 17 (Washington, D.C.: Federal Highway Admin., Sept. 1999). San Francisco experienced a 42 percent reduction in violation rates during a six-month pilot program. Preliminary crash data suggested that the cameras in San Francisco reduced citywide crashes and injuries by red-light runners. Hummer et al., Traffic Signal, at 24. Howard County, Maryland, experienced a 23 percent reduction in the number of RLR violations. Passetti, *Use of Automated Enforcement*, at J-30.

33. United States Dep't of Transp., Synthesis and Evaluation, at 27.

34. Hummer et al., Traffic Signal, at 25.

35. Hummer et al., Traffic Signal, at 23.

36. Brett Vines (current *Safe*Light director) and Randy Jones (former manager of public service for CDOT) both posit that categorizing an automated enforcement RLR violation as a civil nonmoving violation produces just as good results (in reductions in RLR violations and associated crashes), if not better, than making the offense a (more punishable) moving violation. Interviews with Vines, Jones.

37. United States Dep't of Transp., Synthesis and Evaluation, at 25.

38. Interviews with Jones, Vines.

39. Hummer et al., Traffic Signal, at 61, 73.

40. G.S. 160A-300.1(b).

41. Interviews with Jones, Vines.

42. I could not have completed this article without the assistance of many people. In particular, warm thanks go to Capt. Larry Blydenburgh of the Charlotte Police Department; Elizabeth Babson of CDOT; and Randy Jones, formerly of CDOT. Special thanks go to Brett Vines, *Safe*Light director, and David N. Ammons, Institute of Government faculty member, for their help at all stages of this project.

Off the Press

Reaching for Higher Ground in Conflict Resolution: Tools for Powerful Groups and Communities

E. Franklin Dukes, Marina A. Piscolish, and John B. Stephens

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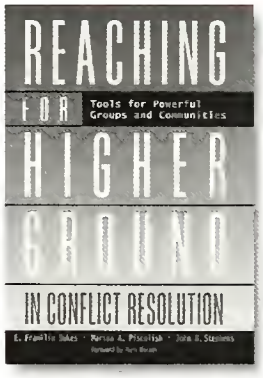

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North Carolina Legislation 2000

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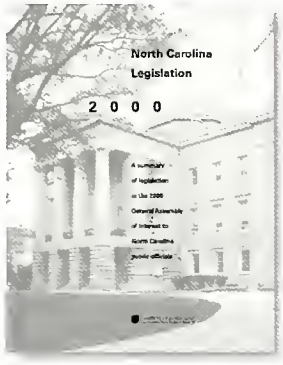

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