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# ESSAY

## LOCAL GOVERNMENT LIABILITY LITIGATION: NUMERICAL NUANCES

*R. Perry Sentell, Jr.\**

### I. INTRODUCTION

Georgia local government law not only encompasses a forbidding substantive expanse; it occupies a dominating presence before the Georgia appellate courts. Those courts are called to resolve all manner of litigation erupting from citizen exposure to government at its first level. The controversies feature issues both recurring and unique; they represent nothing less than the essence of law in daily life.<sup>1</sup>

An annual effort to chronicle those controversies over a good number of years reveals two (among many) distinct facets.<sup>2</sup> First, local government liability has consistently dwarfed all other litigated issues;<sup>3</sup> and second, this pervading characteristic emits no

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<sup>1</sup> See R. PERRY SENTELL, JR., A PROFILE: THE PEOPLE AND THE PRACTICE OF GEORGIA LOCAL GOVERNMENT LAW (1995); R. PERRY SENTELL, JR., ADDITIONAL STUDIES IN GEORGIA LOCAL GOVERNMENT LAW (1983); R. PERRY SENTELL, JR., STUDIES IN GEORGIA LOCAL GOVERNMENT LAW (3d ed. 1977). See also R. Perry Sentell, Jr., *Local Government Litigation: Some Pivotal Principles*, 55 MERCER L. REV. 353 (2003).

<sup>2</sup> Those efforts begin with the author's own survey of R. Perry Sentell, Jr., *Local Government Law*, 15 MERCER L. REV. 105 (1963), and continue through R. Perry Sentell, Jr., *Local Government Law*, 55 MERCER L. REV. 353 (2003). The intervening annual installments may be found in each fall issue of the *Mercer Law Review*.

<sup>3</sup> A "reflection" of a decade ago found that  
'Liability' has accounted for some 21% of the appellate courts' decisions  
(1,563 cases) in local government law. . . . Local government liability for

signs of abating.<sup>4</sup> These facets, in turn, levy two requirements upon students of the subject. First, there is the obvious need for a substantive knowledge of local government liability law.<sup>5</sup> Additionally, students must acquire a perception of liability's historic context, an awareness of the subject's litigational tenacity. It is the latter necessity that prompts this brief effort at descriptive analysis: a focus upon the number of liability cases historically before the courts, the precise issues presented, material distinctions between municipal and county liability litigation, and the decisional results.

The approach is purely numerical, isolating upon case volume and issue content. It seeks to capture and depict the quantifiable aspects of liability litigation appearing in the Georgia appellate courts over the past thirty years (1974 through 2003). This time line bodes sufficient to detect variations and divergences in patterns, and yet to reflect general trends and positions. The analysis delineates each of the three selected decades, ultimately consolidating the manifested results. It likewise affords separate

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the alleged misconduct of officers and employees dwarfs all other subtopics. For the past thirty years, liability has extracted more time and attention from Georgia's appellate courts than any other subject of local government law.

R. Perry Sentell, Jr., *Georgia Local Government Law: A Reflection on Thirty Surveys*, 46 MERCER L. REV. 1, 11, 13 (1994).

<sup>4</sup> See generally R. Perry Sentell, Jr., *Local Government Law*, 55 MERCER L. REV. 353 (2003).

<sup>5</sup> This Article assumes a general familiarity with the basics of the substantive law of local government liability. For earlier efforts on the subject, see the following: R. PERRY SENTELL, JR., *THE LAW OF MUNICIPAL TORT LIABILITY IN GEORGIA* (4th ed. 1988); R. PERRY SENTELL, JR., *GEORGIA LOCAL GOVERNMENT LAW'S ASSIMILATION OF MONELL: SECTION 1983 AND THE NEW "PERSONS"* (1984); R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of '92*, 9 GA. ST. U. L. REV. 405 (1993); R. Perry Sentell, Jr., *Georgia County Liability: Nuisance or Not?*, 43 MERCER L. REV. 1 (1991); R. Perry Sentell, Jr., *Georgia Local Government Officials and the Grand Jury*, 26 GA. ST. B.J. 50 (1989); R. Perry Sentell, Jr., *"Sue and Be Sued" in Georgia Local Government Law: A Vignette of Vicissitudes*, 41 MERCER L. REV. 13 (1989); R. Perry Sentell, Jr., *Individual Liability in Georgia Local Government Law: The Haunting Hiatus of Hennessy*, 40 MERCER L. REV. 27 (1988); R. Perry Sentell, Jr., *Georgia Local Government Tort Liability: The "Crisis" Conundrum*, 2 GA. ST. U. L. REV. 19 (1986); R. Perry Sentell, Jr., *Claims Against Counties: The Difference A Year Makes*, 36 MERCER L. REV. 1 (1984); R. Perry Sentell, Jr., *Georgia Local Government Officers: Rights for Their Wrongs*, 13 GA. L. REV. 747 (1979); R. Perry Sentell, Jr., *Municipal Liability in Georgia: The "Nuisance" Nuisance*, 12 GA. ST. B. J. 11 (1975); R. Perry Sentell, Jr., *Tort Liability Insurance in Georgia Local Government Law*, 24 MERCER L. REV. 651 (1973); R. Perry Sentell, Jr., *Georgia Municipal Tort Liability: Ante Litem Notice*, 4 GA. L. REV. 134 (1969).

treatment to municipalities and counties, similarly coalescing to a unified perspective. The study thus reaches for a quantitative approximation to a Georgia juristic staple.

Acknowledging the deficiencies and inaccuracies inevitably present in a numerical sweep of such proportions,<sup>6</sup> even a general accounting will illustrate local government liability litigation as the historic fixture that it is.

## II. LOCAL GOVERNMENT LIABILITY CASES

### A. MUNICIPAL CASES

Over the past three decades, the Georgia appellate courts grappled with municipal liability controversies in an expansive profusion of factual settings. The volume of this judicial industry may be reflected by figures fashioned for each of the ten-year periods.

1. *Decade: 1974 Through 1983.* TABLE I chronicles the appellate courts' litigational load for the initial period under scrutiny.<sup>7</sup>

TABLE I. MUNICIPAL LIABILITY CASES: 1974-1983			
<i>Year</i>	<i>Cases</i>	<i>Year</i>	<i>Cases</i>
1974	4	1979	10
1975	11	1980	9
1976	9	1981	5
1977	6	1982	7
1978	6	1983	6
TOTAL: 73			

<sup>6</sup> The numbers employed in this treatment are derived from each annual local government survey article for the covered years. Although no guarantee of complete accuracy can be given, care has been taken to assure the correctness of the general conclusions reached.

<sup>7</sup> TABLE I was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 25 MERCER L. REV. 177 (1974), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 35 MERCER L. REV. 233 (1983). The other source articles appear in each of the intervening fall issues of the *Mercer Law Review*.

As the Table discloses, from 1974 through 1983, the Georgia appellate courts dealt with issues of municipal responsibility in approximately seventy-three cases, an average of 7.3 cases per survey year. The number of cases fluctuated rather erratically during the period; indeed, the largest single fluctuation occurred between two consecutive years (ranging from a low of four cases in 1974 to a high of eleven cases in 1975). The four most prolific years of the decade (1975, 1979, 1976, 1980) yielded a total of thirty-nine cases, or fifty-three percent of all relevant cases decided. Necessarily, the respective figures become meaningful only when viewed along with those emerging from the other selected survey periods.

2. *Decade: 1984 Through 1993.* TABLE II indicates the appellate courts' continuing disposition of municipal liability litigation.<sup>8</sup>

TABLE II. MUNICIPAL LIABILITY CASES: 1984-1993			
<i>Year</i>	<i>Cases</i>	<i>Year</i>	<i>Cases</i>
1984	7	1989	6
1985	7	1990	5
1986	7	1991	4
1987	6	1992	11
1988	6	1993	16
TOTAL: 75			

Although slightly less erratic than that of the initially surveyed period, the courts' decisional disposition rate from 1984 through 1993 reached roughly the same overall result: a total of approximately seventy-five cases, or an average of 7.5 cases per covered year. Contrastingly, however, the minimum and maximum yearly totals for this second decade registered a considerably wider gap:

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<sup>8</sup> TABLE II was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 36 MERCER L. REV. 255 (1984), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 45 MERCER L. REV. 325 (1993). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

from a minimum of four cases in 1991 to a maximum of sixteen cases in 1993. In addition, the decisional pace of this second period bears observation. Beginning at virtually the same yearly total as that concluding the first period (six cases in 1983 and seven cases in 1984), the pace lessened slightly (in 1990 and 1991), only to then quadruple by the conclusion of the decade (again, from a total of four cases in 1991 to a total of sixteen cases in 1993). Finally, the five most prolific years of the focused period (1993, 1992, 1984, 1985, and 1986) accounted for a majority of the litigated cases (*i.e.*, forty-eight cases, or sixty-four percent of the total seventy-five cases decided). Did the indicated increase in judicial activity, reflected by the concluding years of the period, signal a trend for the future?

3. *Decade: 1994 Through 2003.* TABLE III concludes the appellate courts' record on municipal liability litigation.<sup>9</sup>

TABLE III. MUNICIPAL LIABILITY CASES: 1994-2003			
<i>Year</i>	<i>Cases</i>	<i>Year</i>	<i>Cases</i>
1994	11	1999	13
1995	11	2000	8
1996	7	2001	11
1997	10	2002	10
1998	6	2003	8
TOTAL: 95			

TABLE III does indeed reflect a continuing trend. Up from a total of seventy-three cases for the first surveyed decade, and seventy-five cases for the second, the third period encompasses a total of ninety-five municipal liability cases (an average of 9.5 cases per year). That surge resulted from a consistently increased yearly decisional

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<sup>9</sup> TABLE III was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 46 MERCER L. REV. 363 (1994), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 55 MERCER L. REV. 353 (2003). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

pace, but slightly fewer fluctuations in annual outputs than the second surveyed decade. Thus, the largest difference in total yearly decisions ranged between thirteen cases in 1999 and six cases in 1998. Significantly, the total cases for six of the ten covered years reached double digits, but the period's four most prolific years (1999, 1994, 1995, and 2001) yielded only forty-six cases, or forty-eight percent of the total ninety-five cases decided. Municipal liability, it appeared, was steadily increasing its demand for attention from the appellate courts.

4. *An Assimilation of Decades.* TABLE IV consolidates the essential results derived from the foregoing surveys of three decades. It reflects the volume of municipal liability litigation before the Georgia appellate courts over the past thirty years. It unfolds a numerical history of liability disposition.

TABLE IV. MUNICIPAL LIABILITY CASES: 1974-2003		
<i>Decade</i>	<i>Cases</i>	<i>Most Prolific Year</i>
1974-1983	73	1975 (11 cases)
1984-1993	75	1993 (16 cases)
1994-2003	95	1999 (13 cases)
TOTALS: 30 YEARS	243 CASES	

The Table reveals that over the past three decades the appellate courts decided an average of 8.1 municipal liability cases each survey year. The most prolific period was the decade of 1994 through 2003, yielding a total of ninety-five judicial decisions. Interestingly, however, the surveyed period's most prolific single year (1993 with a total of sixteen cases) occurred in the preceding decade. Overall, the recorded history depicts that within the arena of Georgia local government law, the state's appellate courts are experiencing a steadily increasing diet of municipal liability litigation. Whether county liability can claim a parallel propensity awaits revelation.

## B. COUNTY CASES

With format established, county liability litigation can be tabulated with a minimum of elaboration.

1. *Decade: 1974 Through 1983.* The initial period under scrutiny registered the lightest litigation load of all.<sup>10</sup>

TABLE V. COUNTY LIABILITY CASES: 1974-1983			
<i>Year</i>	<i>Cases</i>	<i>Year</i>	<i>Cases</i>
1974	3	1979	10
1975	5	1980	5
1976	4	1981	2
1977	1	1982	5
1978	3	1983	5
TOTAL: 43			

The appellate courts thus disposed of only forty-three county liability controversies, or 4.3 cases per survey year. Although each year in the covered period included at least one decision, only one year exceeded five cases (intriguingly, 1979 yielded ten county liability decisions). Otherwise, four years each included five liability cases, and one year (1977) accounted for only a single decision. The five most prolific years of the decade (1979, 1975, 1980, 1982, and 1983) yielded thirty cases, constituting seventy percent of the total forty-three cases decided. The greater governmental immunity traditionally enjoyed by counties over municipalities thus graphically manifested itself during the decade 1974-1983. Whether that historic protection would continue its chilling deterrence of potential claimants remained an inquiry of acute concern.

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<sup>10</sup> TABLE V was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 25 MERCER L. REV. 177 (1974), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 35 MERCER L. REV. 233 (1983). The other source articles appear in each of the intervening fall issues of the *Mercer Law Review*.



2. *Decade: 1984 Through 1993.* The response impressively augured in the negative.<sup>11</sup>

TABLE VI. COUNTY LIABILITY CASES: 1984-1993			
<i>Year</i>	<i>Cases</i>	<i>Year</i>	<i>Cases</i>
1984	7	1989	5
1985	6	1990	3
1986	9	1991	9
1987	4	1992	9
1988	8	1993	14
TOTAL: 74			

As the Table discloses, county liability litigation surged from forty-three to seventy-four cases in the second surveyed decade. This output, of course, constituted an average of 7.4 cases per covered year, with annual totals ranging from a low of three cases in 1990 to a high of fourteen decisions in 1993. The five most prolific years of the period (1993, 1986, 1991, 1992, and 1988) accounted for forty-nine cases, sixty-six percent of the total seventy-four decisions rendered. It was of considerable interest, therefore, that county liability litigation increased dramatically from one decade to the next. Of even heightened intrigue was the latter decade's parity of liability litigation between municipalities (seventy-five cases) and counties (seventy-four cases). Despite historical distinctions in substantive immunity structures, claimants appeared as willing to sue one form of local government as the other. An aberration, or a harbinger of the future?

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<sup>11</sup> TABLE VI was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 36 MERCER L. REV. 255 (1984), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 45 MERCER L. REV. 325 (1993). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

3. *Decade: 1994 Through 2003.* TABLE VII brings the history of county liability litigation in the Georgia appellate courts to its present (and striking) conclusion.<sup>12</sup>

TABLE VII. COUNTY LIABILITY CASES: 1994-2003			
<i>Year</i>	<i>Cases</i>	<i>Year</i>	<i>Cases</i>
1994	11	1999	14
1995	9	2000	6
1996	7	2001	11
1997	21	2002	8
1998	14	2003	10
TOTAL: 111			

The Table's remarkable revelation depicts a virtual explosion of county liability cases during the last decade. Thus, the period boasted a total of 111 decisions, an average of 11.1 cases per covered year. The decade's numerical extremes ranged from a low of six cases in 2000 to a high of twenty-one cases in 1997. The most prolific five years of the period (1997, 1998, 1999, 1994, and 2001) were responsible for seventy-one cases, or sixty-four percent of the total 111 decisions rendered. County responsibility, it appeared, had entered the age of litigiousness.

4. *An Assimilation of Decades.* TABLE VIII assimilates the volume of county liability litigation in the Georgia appellate courts over the past three decades.

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<sup>12</sup> TABLE VII was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 46 MERCER L. REV. 363 (1994), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 55 MERCER L. REV. 353 (2003). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

TABLE VIII. COUNTY LIABILITY CASES: 1974-2003		
<i>Decade</i>	<i>Cases</i>	<i>Most Prolific Year</i>
1974-1983	43	1979 (10 cases)
1984-1993	74	1993 (14 cases)
1994-2003	111	1997 (21 cases)
TOTALS: 30 YEARS	228 CASES	

The Table reveals that the Georgia appellate courts decided an average of 8.1 county liability cases per year over the past thirty years. The surveyed period's most prolific decade (1994-2003) yielded a total of 111 decisions, and the decade's single most prolific year (1997) recorded an output of twenty-one cases. Both the decade and the year exceeded all others (for both municipalities and counties) in the entire study.

#### C. MUNICIPAL AND COUNTY CASES COMPARED

Obviously, the liability litigation involving neither municipalities nor counties stands alone. Each epoch possesses ramifications for the other, and appraisal requires conjunctive consideration. Accordingly, TABLE IX permits volume comparisons for the surveyed decades.

TABLE IX. MUNICIPAL AND COUNTY CASES COMPARED		
<i>Decade</i>	<i>Municipal Cases</i>	<i>County Cases</i>
1974-1983	73 (7.3 per year)	43 (4.3 per year)
1984-1993	75 (7.5 per year)	74 (7.4 per year)
1994-2003	95 (9.5 per year)	111 (11.1 per year)
TOTALS:	243 CASES	228 CASES

## D. MUNICIPAL AND COUNTY CASES CONSOLIDATED

Appraisal enlists not only comparison but a perspective of merger as well. TABLE X combines the case volumes to reflect their collective presence before the courts over the past three decades.

TABLE X. MUNICIPAL AND COUNTY CASES CONSOLIDATED		
<i>Decade</i>	<i>Municipal &amp; County Cases</i>	<i>Average Cases Per Year</i>
1974-1983	116	11.6
1984-1993	149	14.9
1994-2003	206	20.6
TOTALS: 471 CASES		

As the Table manifests, the Georgia appellate courts decided roughly 471 cases dealing with local government liability over the past thirty years, an average of 15.7 cases per covered year. The average annual decisions per decade almost doubled from 1974-1983 (11.6 cases) to 1994-2003 (20.6 cases). Likewise, each decade's most prolific single-year volume for municipal and county cases combined moved upwards from twenty cases in 1979, to thirty cases in 1993, to thirty-one cases in 1997. As compared, contrasted, and consolidated, therefore, liability litigation emerged as local government law's most pressing concern to the Georgia courts.

What precisely was it that attracted such controversy?

## III. LOCAL GOVERNMENT LIABILITY ISSUES

Assuredly, the process of classifying legal issues carries a realistic degree of personal discretion. Classification, that is to say, lies in the eye of the classifier. For the most familiar issues of local government liability, however, identification should risk minimal controversy. References receive fairly common application in the various liability settings, and stewards of the discipline typically employ similar descriptive epithets. In any event, the effort

requires a good faith classification exercise for local government liability issues.

#### A. MUNICIPAL LIABILITY ISSUES

Issues arising in municipal liability litigation range the substantive spectrum and several different issues may appear in a single case.<sup>13</sup> Once again, analysis initially focuses upon each of the ten-year periods.

1. *Decade: 1974 Through 1983.* The municipal liability litigation of the first scrutinized period may be roughly assessed as dealing with eight different issues and presenting some seventy-four total instances in which those issues received treatment by the appellate courts.<sup>14</sup> TABLE XI reflects the decade's six most frequently litigated issues, the number of times each issue was litigated, and the results.<sup>15</sup>

TABLE XI. MUNICIPAL LIABILITY ISSUES: 1974-1983		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>Municipality Won / Lost</i>
Nuisance	26	Won: 14 Lost: 12
Ante Litem Notice	16	Won: 7 Lost: 9
Government-Proprietary	11	Won: 9 Lost: 2
Inverse Condemnation	5	Won: 2 Lost: 3
Streets & Sidewalks	4	Won: 3 Lost: 1
Waiver by Motor Vehicle Insurance	4	Won: 3 Lost: 1
TOTALS: 6 ISSUES	66 INSTANCES	WON: 38 LOST: 28

<sup>13</sup> Accordingly, there is no necessary correlation between the number of issues here discussed and the numbers of cases decided as previously discussed in Section II.

<sup>14</sup> See *infra* note 16 and accompanying text.

<sup>15</sup> Table XI was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 25 MERCER L. REV. 177 (1974), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 35 MERCER L. REV. 233 (1983). The other source articles appear in each of the intervening fall issues of the *Mercer Law Review*.

Without pretense at precision, the decade's municipal liability litigation is roughly divided into eight general categories.<sup>16</sup> Those categories group the objects of judicial disposition in the cases of the period, and disclose the number of dispositions.<sup>17</sup> As noted, the Table features the six issues most frequently litigated, issues accounting for sixty-six instances of litigation (or eighty-nine percent of the period's total seventy-four instances).

As revealed, the appellate courts determined in twenty-six instances whether claimants could prevail on the charge of municipal "nuisance."<sup>18</sup> On sixteen occasions, the courts judged the sufficiency of claimant's "ante litem notice" prior to suit.<sup>19</sup> The courts rendered eleven decisions delineating "governmental" and "proprietary" functions for purposes of weighing sovereign immunity.<sup>20</sup> In efforts aimed largely at avoiding immunity, claimants pressed the courts to decide the issues of "inverse condemnation" (five times),<sup>21</sup> "streets and sidewalks" (four times),<sup>22</sup> and "waiver of immunity by motor vehicle liability insurance" (four times).<sup>23</sup> Finally, of the sixty-six chronicled instances of litigation, the Table reflects thirty-eight municipal victories.

2. *Decade: 1984 Through 1993.* The second surveyed period tolerates classifications of twelve issues, issues litigated in a total of eighty instances during the decade. TABLE XII reveals the six

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<sup>16</sup> In addition to the six issues reflected by the Table, the remaining issues were "Section 1983," and "miscellaneous," which latter category included "regular tort issues," "damages," "change of venue," and "unjust enrichment."

<sup>17</sup> The eight issues received disposition in a total of seventy-four instances during the survey period.

<sup>18</sup> For substantive treatment, see R. PERRY SENTELL, JR., *THE LAW OF MUNICIPAL TORT LIABILITY IN GEORGIA* 117-34 (4th ed. 1988); R. Perry Sentell, Jr., *Municipal Liability in Georgia: The "Nuisance" Nuisance*, 12 GA. ST. B.J. 11 (1975).

<sup>19</sup> For substantive treatment, see R. PERRY SENTELL, JR., *THE LAW OF MUNICIPAL TORT LIABILITY IN GEORGIA* 145-75 (4th ed. 1988); R. Perry Sentell, Jr., *Municipal Tort Liability: Ante Litem Notice*, 4 GA. L. REV. 134 (1969).

<sup>20</sup> For substantive treatment, see R. PERRY SENTELL, JR., *THE LAW OF MUNICIPAL TORT LIABILITY* 5-57.

<sup>21</sup> *Id.* at 134-45.

<sup>22</sup> *Id.* at 63-117.

<sup>23</sup> *Id.* at 177-81; R. Perry Sentell, Jr., *Tort Liability Insurance in Georgia Local Government Law*, 24 MERCER L. REV. 651 (1973).

issues most frequently litigated, the number of litigations, and the decisional results.<sup>24</sup>

TABLE XII. MUNICIPAL LIABILITY ISSUES: 1984-1993		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>Municipality Won / Lost</i>
Nuisance	14	Won: 6 Lost: 8
Section 1983	12	Won: 10 Lost: 2
Government-Proprietary	10	Won: 9 Lost: 1
Streets & Sidewalks	8	Won: 5 Lost: 3
Anti Litem Notice	7	Won: 2 Lost: 5
Personal (individual) Liability	7	Won: 7 Lost: 0
TOTALS: 6 ISSUES	58 INSTANCES	WON: 39 LOST: 19

TABLE XII thus evidences that the decade's six most frequently litigated issues experienced fifty-eight instances of litigation, or seventy-three percent of the period's total eighty instances.<sup>25</sup> New issues in the top rankings included twelve "Section 1983" litigations (actions charging municipal violation of the federal civil rights statute),<sup>26</sup> and seven claims against municipal officers in their

<sup>24</sup> TABLE XII was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 36 MERCER L. REV. 255 (1984), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 45 MERCER L. REV. 325 (1993). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

<sup>25</sup> The additional six issues of the decade were as follows: "waiver of immunity by motor vehicle insurance," "waiver of immunity by general liability insurance," "high-speed chases," "inverse condemnation," "regular tort issues," and "miscellaneous," consisting of "emergency services," "damages," and "license suspension."

<sup>26</sup> For substantive treatment, see R. PERRY SENTELL, JR., *GEORGIA LOCAL GOVERNMENT LAW'S ASSIMILATION OF MONELL: SECTION 1983 AND THE NEW "PERSONS"* (1984); R. Perry Sentell, Jr., *Local Government and Constitutional Torts: In The Georgia Courts*, 49 MERCER L. REV. 1 (1997).

individual capacities.<sup>27</sup> During this decade, the municipality prevailed in thirty-nine of the fifty-eight depicted instances.

3. *Decade: 1994 Through 2003.* During the final decade under examination, claimants pressed some fourteen liability issues against municipalities, in a total 107 instances of litigation. TABLE XIII elaborates the six issues most frequently litigated, as well as the accompanying instances and results.<sup>28</sup>

TABLE XIII. MUNICIPAL LIABILITY ISSUES: 1994-2003		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>Municipality Won / Lost</i>
Nuisance	22	Won: 15 Lost: 7
Personal (individual) Liability	14	Won: 12 Lost: 2
Ante Litem Notice	13	Won: 10 Lost: 3
Section 1983	12	Won: 11 Lost: 1
Streets & Sidewalks	8	Won: 6 Lost: 2
High-Speed Chases	8	Won: 4 Lost: 4
TOTALS: 6 ISSUES	77 INSTANCES	WON: 58 LOST: 19

Obviously, municipal liability litigation increased significantly during the third decade, with issues rising from eight (first period) and twelve (second period), to a total of fourteen.<sup>29</sup> The instances of

<sup>27</sup> For substantive treatment, see R. Perry Sentell, Jr., *Individual Liability in Georgia Local Government Law: The Haunting Hiatus of Hennessy*, 40 MERCER L. REV. 27 (1988); R. Perry Sentell, Jr., *Georgia Local Government Officers: Rights for Their Wrongs*, 13 GA. L. REV. 747 (1979).

<sup>28</sup> TABLE XIII was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 46 MERCER L. REV. 363 (1994), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 55 MERCER L. REV. 353 (2003). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

<sup>29</sup> The remaining eight of the fourteen issues were as follows: "regular tort issues," "recreational property act," "governmental vs. proprietary," "damages," "waiver by general liability insurance," "inverse condemnation," "bad faith," and "miscellaneous" consisting of "waiver by motor vehicle insurance," "negligent retention," "indemnification," "police statutory responsibility," and "personal (official) liability."



litigation showed an even more substantial surge: from seventy-four (first period) and eighty (second period), to a total of 107 in the final decade. The only issue appearing in the top-six rankings for the first time was that of "high-speed chases," actions alleging injury by an officer in pursuit of a fleeing motorist or by the motorist himself. As depicted, the municipality prevailed in fifty-eight of the total seventy-seven litigation instances reflected.

4. *An Assimilation of Decades.* The prior three tables have chronicled the six most litigated municipal liability issues of each decade (through a total of 201 instances of litigation). TABLE XIV projects the most frequently litigated issues of the entire thirty-year period, indicating total instances of litigation and the decisional results.

TABLE XIV. TOP MUNICIPAL LIABILITY ISSUES: 1974-2003		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>Municipality Won / Lost</i>
Nuisance	62	Won: 35 Lost: 27
Ante Litem Notice	36	Won: 19 Lost: 17
Section 1983	26	Won: 22 Lost: 4
Governmental vs. Proprietary	24	Won: 21 Lost: 3
Personal (individual) Liability	21	Won: 19 Lost: 2
Streets & Sidewalks	20	Won: 14 Lost: 6
TOTALS: 6 TOP ISSUES	189 INSTANCES	WON: 130 (69%) LOST: 59 (31%)

Actions charging the creation and maintenance of nuisances thus exceeded all others brought against Georgia municipalities over the past thirty years. Those suits, TABLE XIV evidences, decisively surpassed the second most frequently litigated issue ("ante litem notice"), and completely dominated the remaining issues. Additionally, although municipalities prevailed in roughly fifty-six percent of the nuisance cases, that ratio ranked among the lowest of municipal litigation accomplishments. The nuisance action remains

a troubling one, therefore, for municipalities and for the Georgia appellate courts.

TABLE XV concludes the exclusive focus upon municipal liability issues with a numerical summary of the thirty-year experience.

TABLE XV. MUNICIPAL LIABILITY ISSUES & INSTANCES OF LITIGATION: 1974-2003			
<i>Decade</i>	<i>No. of Issues</i>	<i>Instances of Litigation</i>	<i>Municipality Won/Lost</i>
1974-1983	8	74	Won: 42 (57%) Lost: 32 (43%)
1984-1993	12	80	Won: 51 (64%) Lost: 29 (36%)
1994-2003	14	107	Won: 82 (77%) Lost: 25 (23%)
TOTALS: 30 YEARS		261 INSTANCES	WON: 175 (67%) LOST: 86 (33%)

## B. COUNTY LIABILITY ISSUES

County liability issues likewise spanned the substantive gamut; they too are treated within the three familiar ten-year frames of litigation.

1. *Decade: 1974 Through 1983.* County liability litigation of the initial period dealt generally with seven different issues, operating through a total of forty-six litigation instances. TABLE XVI captures the decade's six most frequently litigated topics, the number of litigations, and the judicial results.<sup>30</sup>

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<sup>30</sup> TABLE XVI was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 25 MERCER L. REV. 177 (1974), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 35 MERCER L. REV. 233 (1983). The other source articles appear in each of the intervening fall issues of the *Mercer Law Review*.

TABLE XVI. COUNTY LIABILITY ISSUES: 1974-1983		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>County Won / Lost</i>
Basic Sovereign Immunity	13	Won: 12 Lost: 1
Nuisance ("taking")	11	Won: 3 Lost: 8
Ante Litem Notice	9	Won: 5 Lost: 4
Personal (individual) Liability	6	Won: 4 Lost: 2
Waiver by General Liability Insurance	1	Won: 1 Lost: 0
Section 1983	1	Won: 1 Lost: 0
TOTALS: 6 ISSUES	41 INSTANCES	WON: 26 LOST: 15

The Table highlights six of the decade's seven categorized issues, accounting for forty-one instances of litigation (or eighty-nine percent of the total forty-six instances).<sup>31</sup> As indicated, the courts passed upon the county's basic sovereign immunity on thirteen occasions,<sup>32</sup> and determined the validity of eleven nuisance charges (unlike municipal nuisances, county nuisances must rise to the level of an invalid "taking").<sup>33</sup> The sufficiency of the claimant's notice to the county prior to suit drew the courts' attention in nine settings,<sup>34</sup> and the county officer's personal responsibility (in his individual capacity) garnered six decisions.<sup>35</sup> Finally, the courts devoted one

<sup>31</sup> The remaining items were grouped under the category of "miscellaneous," which category included "regular tort issues," see *infra* note 43, "failure to fund settlement," "damages," "personal (official) liability," and "contempt."

<sup>32</sup> For substantive treatment, see R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of '92*, 9 GA. ST. U. L. REV. 405 (1993); R. Perry Sentell, Jr., *Georgia Local Government Tort Liability: The "Crisis" Conundrum*, 2 GA. ST. U. L. REV. 19 (1986).

<sup>33</sup> For substantive treatment, see R. Perry Sentell, Jr., *Georgia County Liability: Nuisance or Not?*, 43 MERCER L. REV. 1 (1991).

<sup>34</sup> For substantive treatment, see R. Perry Sentell, Jr., *Claims Against Counties: The Difference A Year Makes*, 36 MERCER L. REV. 1 (1984).

<sup>35</sup> For substantive treatment, see R. Perry Sentell, Jr., *Individual Liability in Georgia Local Government Law: The Haunting Hiatus of Hennessy*, 40 MERCER L. REV. 27 (1988); R. Perry Sentell, Jr., *Georgia Local Government Officers: Rights for Their Wrongs*, 13 GA. L. REV.

decision each to the county's waiver of immunity by general liability insurance<sup>36</sup> and to a charge of civil rights violations.<sup>37</sup> Additionally, the Table reflects county victories in twenty-six of the forty-one litigation instances.

2. *Decade: 1984 Through 1993.* County liability litigation in the second surveyed period expanded to eleven designated issues, litigated in a total of seventy-five instances. TABLE XVII posts the period's six most frequently litigated issues, the quantity of litigation devoted to each, and the decisional determinations.<sup>38</sup>

TABLE XVII. COUNTY LIABILITY ISSUES: 1984-1993		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>County Won / Lost</i>
Waiver by General Liability Insurance	15	Won: 10 Lost: 5
Nuisance ("taking")	11	Won: 8 Lost: 3
Section 1983	11	Won: 10 Lost: 1
Ante Litem Notice	7	Won: 3 Lost: 4
Basic Sovereign Immunity	6	Won: 6 Lost: 0
Personal (individual) Liability	6	Won: 4 Lost: 2
TOTALS: 6 ISSUES	56 INSTANCES	WON: 41 LOST: 15

The Table reflects that of eleven issues judicially treated during the second period,<sup>39</sup> the six most frequently litigated issues ac-

747 (1979).

<sup>36</sup> For substantive treatment, see R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of '92*, 9 GA. ST. U. L. REV. 405 (1993).

<sup>37</sup> For substantive treatment, see R. Perry Sentell, Jr., *Local Government and Constitutional Torts: In the Georgia Courts*, 49 MERCER L. REV. 1 (1997).

<sup>38</sup> TABLE XVII was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 36 MERCER L. REV. 255 (1984), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 45 MERCER L. REV. 325 (1993). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

<sup>39</sup> The additional five issues were as follows: "waiver by motor vehicle liability insurance," "regular tort issues," see *infra* note 43, "personal (official) liability," "recreational

counted for fifty-six instances of litigation (or seventy-five percent of the total seventy-five instances). These six issues duplicated those featured from the first decade (though not ranked in the same order),<sup>40</sup> with the county prevailing in forty-one (or seventy-three percent) of the total fifty-six instances.

3. *Decade: 1994 Through 2003.* The final decade experienced a veritable explosion of county liability litigation: although issues only increased to a total of thirteen, the period's instances of litigation surged to 122. TABLE XVIII delineates the six most prolific issues, the amount of litigation concerning each, and the resulting decisions.<sup>41</sup>

TABLE XVIII. COUNTY LIABILITY ISSUES: 1994-2003		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>County Won / Lost</i>
Personal (individual) Liability	50	Won: 39 Lost: 11
Waiver by Motor Vehicle Insurance	13	Won: 6 Lost: 7
Section 1983	11	Won: 11 Lost: 0
Nuisance ("taking")	8	Won: 6 Lost: 2
Basic Sovereign Immunity	5	Won: 5 Lost: 0
High-Speed Chases	5	Won: 2 Lost: 3
TOTALS: 6 ISSUES	92 INSTANCES	WON: 69 LOST: 23

The Table thus unfolds the most dramatic development of the entire study. Instances treating the period's six most frequently

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property act," and "miscellaneous" consisting of "high-speed chases," "inverse condemnation," and "eighth amendment."

<sup>40</sup> *E.g.*, "basic sovereign immunity" fell from first place to the bottom, and "waiver by general liability insurance" rose from the bottom position to the top.

<sup>41</sup> TABLE XVIII was derived from annual articles beginning with R. Perry Sentell, Jr., *Local Government Law*, 46 MERCER L. REV. 363 (1994), and concluding with R. Perry Sentell, Jr., *Local Government Law*, 55 MERCER L. REV. 353 (2003). The other source articles appear in the intervening fall issues of the *Mercer Law Review*.

litigated issues increased to a total of ninety-two (up from fifty-six for the previous decade).<sup>42</sup> "Personal (individual) liability" ascended from the bottom position of the prior decade (six instances) to a daunting total of fifty litigation instances. "Waiver by motor vehicle insurance" and "high-speed chases" entered the rankings, while both "waiver by general liability insurance" and "ante litem notice" dropped out. Of the reflected ninety-two instances (accounting for seventy-five percent of the period's 122 litigations), the county prevailed sixty-nine times. Truly, the final decade featured a period of high turbulence in the history of county liability litigation.

4. *An Assimilation of Decades.* The prior three tables have chronicled the six most litigated county liability issues of each decade (through a total of 189 instances of litigation). TABLE XIX discloses the six most frequently litigated liability issues of the entire thirty-year period, together with total instances of litigation, and the resulting judicial decisions.

TABLE XIX. TOP COUNTY LIABILITY ISSUES: 1974-2003		
<i>Issue</i>	<i>Instances of Litigation</i>	<i>County Won / Lost</i>
Personal (individual) Liability	62	Won: 47 Lost: 15
Nuisance ("taking")	30	Won: 17 Lost: 13
Basic Sovereign Immunity	24	Won: 23 Lost: 1
Section 1983	23	Won: 22 Lost: 1
Regular Tort Issues	19	Won: 16 Lost: 3
Waiver by Motor Vehicle Insurance	17	Won: 10 Lost: 7
TOTALS: 6 ISSUES	175 INSTANCES	WON: 135 (77%) LOST: 40 (23%)

<sup>42</sup> The additional seven issues of the period were as follows: "regular tort issues," see *infra* note 43, "inverse condemnation," "personal (official) liability," "inmate care," "attorney fees," "EMT immunity," and "miscellaneous" consisting of "waiver by rental contract," "state roads," "ante litem notice," and "waiver by general liability insurance."

Claimants' actions against the county officer or employee in his or her individual capacity thus exceeded all others in the theater of county liability litigation over the past thirty years. Those actions, arriving at full fruition only in the most recent decade, virtually doubled the second most popular subset of complaints against counties (nuisance). Presenting yet another surprise of the final tabulation, the topic of "regular tort issues" entered the top rankings of county liability litigation.<sup>43</sup> As for results, the county enjoyed its greatest success in litigating "basic sovereign immunity" and "Section 1983" (winning ninety-six percent of both instances), and fared worst in defending against "nuisance" claims (a winning ratio of fifty-seven percent).

TABLE XX concludes the exclusive focus upon county liability with a numerical capsule of the thirty-year experience.

TABLE XX. TOP COUNTY LIABILITY ISSUES & INSTANCES OF LITIGATION: 1974-2003			
<i>Decade</i>	<i>No. of Issues</i>	<i>Instances of Litigation</i>	<i>County Won / Lost</i>
1974-1983	7	46	Won: 31 (67%) Lost: 15 (33%)
1984-1993	11	75	Won: 57 (76%) Lost: 18 (24%)
1994-2003	13	122	Won: 91 (75%) Lost: 31 (25%)
TOTALS: 30 YEARS		243 INSTANCES	WON: 179 (74%) LOST: 64 (26%)

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<sup>43</sup> Items characterized as "regular tort issues" during the course of the survey included such issues as "causation," "negligence," "foreseeability," "duty," "agency," "releases," and the like—the types of issues encountered in tort cases generally whether or not involving local governments.

### C. MUNICIPAL AND COUNTY LIABILITY ISSUES AND INSTANCES OF LITIGATION COMPARED

With the issues of municipal and county liability litigation now separately delineated and examined, concluding comparisons of findings naturally follow. Those comparisons reflect, no less, a synthesis of the liability litigation structure.

Initially, it is fitting to review in tandem simply the number of issues litigated in the two systems over the course of the past three decades. TABLE XXI recalls the relatively few (arbitrarily conferred) classifications imposed upon the appellate courts' decisional corpus.

TABLE XXI. NUMBER OF MUNICIPAL AND COUNTY LIABILITY ISSUES: 1974-2003		
<i>Decade</i>	<i>No. of Municipal Issues</i>	<i>No. of County Issues</i>
1974-1983	8	7
1984-1993	12	11
1994-2003	14	13

Of a more substantive import, TABLE XXII compares the total times the above issues were litigated in the two systems, indicating as well the respective litigation success rates.

TABLE XXII. MUNICIPAL AND COUNTY INSTANCES OF LITIGATION: 1974-2003		
<i>Decade</i>	<i>Municipal Instances of Litigation</i>	<i>County Instances of Litigation</i>
1974-1983	74 (Municipality won 57%)	46 (County won 67%)
1984-1993	80 (Municipality won 64%)	75 (County won 76%)
1994-2003	107 (Municipality won 77%)	122 (County won 75%)
TOTALS: 30 YEARS	261 INSTANCES (WON: 67%)	243 INSTANCES (WON: 74%)



Finally, TABLE XXIII extracts and compares the two systems' six most frequently litigated issues over the past thirty years, the number of times each issue was contested, and the local governments' rates of litigation success.

TABLE XXIII. MOST FREQUENTLY LITIGATED ISSUES & INSTANCES OF LITIGATION: 1974-2003			
<i>Municipal Issues &amp; Instances</i>		<i>County Issues &amp; Instances</i>	
Nuisance	62 (Won: 56%)	Individual Liability	62 (Won: 75%)
Ante Litem Notice	36 (Won: 53%)	Nuisance ("taking")	30 (Won: 57%)
Section 1983	26 (Won: 85%)	Basic Sovereign Immunity	24 (Won: 96%)
Government vs. Proprietary	24 (Won: 88%)	Section 1983	23 (Won: 96%)
Individual Liability	21 (Won: 90%)	Regular Tort Issues	19 (Won: 84%)
Streets & Sidewalks	20 (Won: 71%)	Waiver by Motor Vehicle Insurance	17 (Won: 59%)
TOTALS: 189 (MUNICIPALITY WON: 69%)		175 (COUNTY WON: 77%)	

#### D. MUNICIPAL AND COUNTY LIABILITY ISSUES AND INSTANCES OF LITIGATION CONSOLIDATED

It remains to blend the independently derived findings into a collage of local government liability litigation. TABLE XXIV seeks to honor that effort.

TABLE XXIV. MUNICIPAL AND COUNTY LIABILITY INSTANCES OF LITIGATION: 1974-2003			
<i>Decade</i>	<i>Total Instances of Litigation</i>	<i>Government Success</i>	<i>Top Litigated Issues</i>
1974-1983	120	Won: 61%	Nuisance
1984-1993	155	Won: 70%	Nuisance
1994-2003	229	Won: 76%	Individual Liability
TOTALS: 30 YEARS	504 INSTANCES	WON: 70%	NUISANCE

#### IV. CONCLUSION

This numerical description of local government liability in the Georgia appellate courts has focused upon case volume and litigation content. For municipalities, the results converge as conveyed by TABLE XXV.

TABLE XXV. MUNICIPAL CASES, ISSUES, AND INSTANCES OF LITIGATION: 1974-2003				
<i>Decade</i>	<i>Cases</i>	<i>Issues</i>	<i>Instances</i>	<i>Most Litigated Issue</i>
1974-1983	73	8	74	Nuisance
1984-1993	75	12	80	Nuisance
1994-2003	95	14	107	Nuisance
TOTALS: 30 YEARS 243 CASES			261 INSTANCES	NUISANCE

TABLE XXVI brings the same results to bear for counties.

TABLE XXVI. COUNTY CASES, ISSUES, AND INSTANCES OF LITIGATION: 1974-2003				
<i>Decade</i>	<i>Cases</i>	<i>Issues</i>	<i>Instances</i>	<i>Most Litigated Issue</i>
1974-1983	43	7	46	Basic Sovereign Immunity
1984-1993	74	11	75	Waiver by Gen. Liability Ins.
1994-2003	111	13	122	Individual Liability
TOTALS: 30 YEARS 228 CASES			243 INSTANCES	INDIVIDUAL LIABILITY

Finally, TABLE XXVII concludes the exercise by fusing the findings for municipalities and counties into a composite whole for Georgia local governments.

TABLE XXVII. MUNICIPAL & COUNTY CASES, ISSUES AND INSTANCES OF LITIGATION: 1974-2003			
<i>Decade</i>	<i>Cases</i>	<i>Instances</i>	<i>Most Litigated Issue</i>
1974-1983	116	120	Nuisance
1984-1993	149	155	Nuisance
1994-2003	206	229	Individual Liability
TOTALS: 30 YEARS	471 CASES	504 INSTANCES	NUISANCE

These final perspectives provide appropriate closure for the study's generating origins. They conclude an illuminating backdrop for a rural fixture steeped in history yet vibrant in contemporary

significance. Legally enforceable accountability has long held centerpiece prominence in the local government controversies reaching Georgia's appellate courts. The courts' decisions in resolving those controversies form a body of principles pivotally important both to government and to citizen. A full understanding of those principles requires a mastery of features both substantive and contextual.

Emphasis on context mandates a focus trained primarily upon historical surroundings. This brief study, structured from past annual surveys, focuses upon the surroundings of case volume, local government entity, predominating issue, content of concept, and instances of litigation. Incrementally by decade, and collectively from a thirty-year composite, revealing numerical nuances emerge. They proffer an extra dimension for appraising local government liability litigation in Georgia.<sup>44</sup>

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<sup>44</sup> They also set the stage intriguingly for anticipating the effects of legislation enacted by the Georgia General Assembly in 2002 (O.C.G.A. § 36-92-1 through 36-92-5) which, beginning in 2005, will phase in an express waiver of local government immunity for losses arising out of claims for the negligent operation of motor vehicles. The extent to which that phased-in liability impacts the traditional liability litigation system numerically examined in this study will warrant careful future evaluation.

