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FOCUS

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Affirmative Action Victory

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Black Benevolence: An American Tradition

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Black Votes Count

A Review of Civil Rights Attorney Frank Parker's New Book on the Legal Struggle to Gain Voting Rights for Blacks in Mississippi

POLITICAL TRENDLETTER®

Perspective

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Report the Whole Story

Given its capacity to expose and to educate, to shock and to inspire, the free American press—despite its shortcomings—is one of the most powerful engines of social change in the nation.

In many ways, the civil rights movement was a public drama acted out in the print and broadcast media. Journalists made all Americans—and indeed the world—eyewitnesses to the stoning of black school children, the murders of civil rights workers, and the bombing of churches and synagogues. Most Americans were shocked and embarrassed by what they saw in print and pictures, and a consensus emerged for social change.

While the media can be enormously influential in the area of race relations, it often has to be prodded into using that influence. In 1968, the Kerner Commission, which studied the ghetto riots of the sixties, indicted the media for failing both to report adequately on racial problems and to communicate potential solutions. Today, the media appears to be missing much of the race relations story of the nineties. We can't afford to let that happen.

A blue-ribbon committee of distinguished black and white scholars, convened by the National Academy of Sciences, recently concluded in *A Common Destiny: Blacks and American Society* that "significant discrimination against blacks is still a feature of American society," that "full assimilation of blacks in a 'color-blind' society is unlikely in any foreseeable future," and that the ingredients exist for new racial confrontations and violence.

These assertions are borne out by Howard Beach and Bensonhurst, by the election of a former Ku Klux Klansman to the Louisiana legislature, and by new activism among old and new hate groups. Except for the most egregious incidents, however, the mass media have not concentrated on the double scourge of resurgent discrimination and worsening socioeconomic conditions which have resulted from the long-term racial inequality that many black Americans face.

The media must be prodded into reporting on the conditions described in the National Academy study and on the way racism harms the nation's ailing economy as well as its standing among democratic societies.

The media have done better at covering the part of the picture that shows some improvement in race relations and in the status of blacks in America. Progress has been made here—Justice Thurgood Marshall, General Colin Powell, Representative William Gray, Democratic Party Chairman Ronald Brown, Governor Douglas Wilder, and Mayor David Dinkins are vivid proof. Gradually blacks are appearing in the board rooms and executive suites of major corporations. Moreover, the black middle-class has grown substantially over the past three decades.

The cause of racial justice would be served best if society had a better understanding of the entire, complex picture of race relations—the good, the bad, and the ugly. The media must play a more aggressive role both in enlightening the public about all that has been accomplished and in reminding the nation that much remains undone. The civil rights struggle in America has led to many victories on many battlefields. But we must fight on until true justice is won. What the media have in common with those of us in research and academe is the unshakeable belief that knowledge is power. Let us use that power to report the whole story on race. ■

Eddie N. Williams

PRESIDENT

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Affirmative Action Victory

The Supreme Court's Decisions to Uphold Minority Broadcast Policies May Signal a Shift From the Court's Conservative Trend

by Mark Lloyd

Joy and shock, that's how many in the civil rights and legal community reacted to the latest Supreme Court decision on affirmative action. Many had feared that the rulings on two controversial Federal Communications Commission (FCC) policies would be the death knell for all minority preference policies. But in a stunning reversal of its conservative trend, the Court validated Congress's power to create affirmative action programs not only to remedy past discrimination but also to reach future goals such as achieving diversity.

In a 5-to-4 decision, the Supreme Court ruled that "benign race-conscious measures mandated by Congress" are "constitutionally permissible." Benign race-conscious measures, unlike those that harm racial groups like the concept of separate but equal, are measures designed to achieve a positive goal. The two FCC policies just reviewed, for example, were designed to achieve diversity among broadcast licensees. "The court adopted the position many of us had been advocating for decades," says Barbara Arnwine, executive director of the Lawyers' Committee for Civil Rights Under Law.

Conflicting Decisions in the Lower Court

The two cases, *Astroline Communications Co.* v. *Shurberg Broadcasting* and *Metro Broadcasting, Inc.* v. *FCC*, involved challenges to two FCC affirmative action policies and reached the High Court after two conflicting decisions by the D.C. Circuit Court.

Astroline. In 1984, Faith Center, owner of a television station in Hartford, Connecticut, was having its license revoked. The FCC, as part of its distress sale policy, permits the owner of a TV or radio station in trouble to sell the station to a minority broadcaster at a small loss, avoiding the risk of a complete loss. In this case the FCC approved the TV station's sale to Astroline, a communications group with an Hispanic general partner (who invested only 210 dollars of the $3.1 million purchase price but nevertheless held controlling interest). Although distress sales have been and continue to be available to non-minorities, Alan Shurberg, a white businessman, challenged the sale, arguing that the policy discriminated against him because of his race. The lower court ruled in Shurberg's favor.

Metro Broadcasting. In 1983, Metro Broadcasting and Rainbow Broadcasting competed for a permit to operate a new television station in Orlando, Florida. The FCC licensing policy gives extra qualification credits to broadcasters with greater percentages of minorities and women participating in ownership or as employees. Rainbow (90 percent Hispanic, 5 percent female) won out in the competitive hearing process. Metro went to court, arguing that the competitive advantage of female and minority applicants was unconstitutional. The lower court disagreed, upholding the FCC's procedure.

Policies to Promote Diversity

Before the Supreme Court were two conflicting lower court decisions which raised the question: Can Congress mandate race and gender-based strategies to promote diversity?

The Court finally ruled that neither of the FCC minority preference policies mandated by Congress violates equal protection principles. It also ruled that achieving diversity is a valid constitutional goal. The Court said that "the diversity of views and information on the airwaves serves important First Amendment values."

Writing for the dissenting minority, Justice Sandra Day O'Connor argued that "except in the narrowest of circumstances, the Constitution bars [the use of] racial classifications as an infringement of the equal protection rights of individuals." O'Connor further argued that broadcast diversity "provides no legitimate, much less important, reason to employ race classifications."

In another minority opinion, Justice Anthony Kennedy drew an analogy between the FCC's minority policies and the policies of racial separation established by South Africa. Joined in that opinion by Justice Antonin Scalia, Kennedy likened the decision to *Plessy* v. *Ferguson* (the vilified 1896 Louisiana doctrine of "separate but equal"). Kennedy went on to write, "I regret that after a century of judicial opinions we interpret the Constitution to do no more than move us from 'separate but equal' to 'unequal but benign.'"

In 1978, when the policies at issue were adopted, fewer than 50 of the 11,000-plus licenses to use the public airwaves were held by minorities. While the airwaves belong to the entire public, and the regulation of those airwaves is paid for by the entire public through taxes, the control of those airwaves was in the near-exclusive hands

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Mr. Lloyd is associate director of communications for electronic programs at the Joint Center.

of white males. This amounted to a vast grant of power over a scarce public resource. It is a power both to make tremendous sums of money and to wield considerable influence over public opinion.

The Carter-appointed FCC recognized this. It also acknowledged the chronic underrepresentation and misrepresentation of minorities in programming in the broadcast media. The FCC, and later Congress, determined that both problems were directly linked to the historic and continuing societal discrimination against women and minorities. The FCC set out to address these problems and adapted its policies on the competitive hearing process and distress sales to promote minority ownership.

For the few white broadcasting entrepreneurs willing (or being forced) to sell their property, these policies provide an incentive to look outside the old-boy networks and seek minorities and women. They also provide an incentive for white male broadcasters to invite women and minorities to play prominent roles within their organizations, since the presence of minorities and women will give them a competitive advantage in future station bids.

The FCC's rationale for these policies is that "full minority participation in the ownership and management of broadcast facilities results in a more diverse selection of programming. In addition, an increase in ownership by minorities will inevitably enhance the diversity of control of a limited resource..." (Statement of Policy on Minority Ownership of Broadcasting Facilities). This link with broadcast content was later confirmed in studies by the Congressional Research Service, which found that as a result of these remedial programs, the representation of minority viewpoints over the airwaves had increased.

In 1987, the Reagan-appointed FCC announced that it was abandoning these policies, but Congress stepped in and inserted a provision in the FCC appropriations bill to prevent the agency from reversing course.

By 1990, the number of broadcast licenses granted to minorities had climbed to over 300. While that number still represents a small percentage of the total, it shows a six-fold increase since the policies went into effect.

In an April 1990 speech to the Bay Area [San Francisco/Oakland] Black Media Conference, FCC Commissioner Andrew Barrett said the real reason the policies came under attack is that while the demand for broadcast properties is increasing, the supply is dwindling. "It should come as no surprise that in a market that offers fewer good deals, the commission's minority ownership policies have come under increased scrutiny by nonminorities."

A Separate Standard for Congress

The argument in this case focused not on how to get more diverse viewpoints in broadcasting or, as FCC Commissioner Barrett put it in his speech, on how to expand the market of available broadcasting outlets. The legal argument turned on the question of what standard of review the Court should apply in considering Congress's power. The Court decided that Congress has the power to enact affirmative action programs.

In her dissent, Justice O'Connor argued that the use of any racial classification, even by Congress, required a high standard of review, known as strict scrutiny. "The Constitution's guarantee of equal protection binds the federal government as it does the states," she wrote.

The majority noted, however, that O'Connor had made the opposite argument in two previous affirmative action cases. They are *City of Richmond* v. *J.A. Croson*, where the court held unconstitutional a minority set-asides program established by a city, and *Fullilove* v. *Klutznick*, where the court held constitutional a federal minority set-aside program that was enacted by Congress. In *Fullilove*, O'Connor said strict scrutiny did not apply to a "program employing a benign racial classification...adopted by an administrative agency at the explicit direction of Congress." O'Connor reaffirmed that position in her majority opinion on the *Croson* case last year. (The Richmond program was deemed unconstitutional both because it was too broad and because it was established under questionable methods; set-asides *per se* were not found unconstitutional, however.)

As Justice Brennan noted in the FCC decision, writing for the majority, "[it] is of overriding significance in these cases that the FCC's minority ownership programs have been specifically approved—indeed, mandated—by Congress."

Arnwine stresses the importance of the Court's adoption of a position long held by Justice John Paul Stevens. That is, that the use of racial classifications by the federal government should be expanded to include the goal of future benefits, such as achieving diversity in a university or among broadcast licensees. Affirmative action programs, Stevens argued, should not have to be justified only as remedies for past wrongs.

Justice White's Key Vote

The usually conservative Justice Byron White provided what many considered the pivotal and surprising vote on the FCC decision. White played a similar role in the *Kansas City, Missouri* v. *Jenkins* decision upholding federal judges' authority to order local school boards to raise property taxes in order to pay for school desegregation plans.

Nevertheless, Justice White's joining with the liberal wing of the court in these cases does not represent a shift in his position, according to Georgetown University law professor Mark Tushnet. "White is a supporter of affirmative action and school desegregation," says Tushnet, "but, more than that, he is a nationalist, a firm believer in the use of federal power." Both the FCC and the school desegregation decisions turned on whether the federal government (a federal judge in the Kansas City case, the Congress in the FCC cases) can legitimately use its power to achieve a constitutional objective.

According to Arnwine, "the FCC decision shows that *Croson* was not the death knell to affirmative action, that

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POLITICAL TRENDLETTER®

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- **U.S. Senate passes the Civil Rights Act over a presidential veto threat.**
- **Gubernatorial hopeful Andrew Young fails to garner a majority of votes in the Georgia primary and faces an August runoff.**
- **Torture, "disappearances," and other human rights violations are on the rise worldwide.**
- **A bill passed by the U.S. would provide scholarships and loans to minorities in health professions.**
- **Across the Nation: A federal court throws out the districting plan for Los Angeles County because it limits minorities' chances of election to the board; State Sen. Jon Johnson and attorney Marc Morial are running for Congress in Louisiana; U.S. Supreme Court denies plaintiffs' request to require elected school boards in Virginia and upholds the appointive system.**

The Senate Acts on Civil Rights

On July 18, disregarding a threat of a veto by President GEORGE BUSH, the U.S. Senate passed the Civil Rights Act of 1990 (S. 2104/H.R. 4000) by a vote of 65 to 34. The Act would overturn six 1989 Supreme Court decisions involving employment discrimination and would amend Title VII of the Civil Rights Act of 1964. Introduced by Congressman **AUGUSTUS HAWKINS** (D-Cal.) and Senator **EDWARD KENNEDY** (D-Mass.), the bill would restore the right of minorities and women to seek judicial remedies for discrimination, including punitive damages that had been limited by the high court in a 1989 ruling. The bipartisan bill attracted 48 cosponsors in the Senate and 178 House cosponsors. **The measure represents efforts of the civil rights community to "replace the teeth in Title VII and halt the turn-back-the-clock tide of the Reagan court," according to RALPH NEAS, executive director of the Leadership Conference on Civil Rights.**

President Bush, who so far has sided with Attorney General RICHARD THORNBURGH and White House Chief of Staff JOHN SUNUNU, has vowed to support, in his words, "A civil rights bill, not a quota bill." Administration opponents of the legislation claim that it is not necessary and, if approved, may compel employers to institute a system of "quotas" to avoid litigation by employees.

Initially, the administration's position was that no action was necessary on the Court decisions. The White House maintained that the rulings merely represented technical adjustments to existing civil rights laws. After Hawkins and Kennedy introduced the Act, Congress and the White House engaged in talks to craft a compromise that would preserve the provisions of the Act and at the same time be palatable to the President. But negotiations collapsed when the bill's sponsors rejected an administration substitute measure that Hawkins and Kennedy believed would gut the Act.

Ten Senate Republicans voted with all 55 Democrats to pass the bill with a strong majority—but one that is two votes short of being veto-proof. While negotiations between Congress and the administration have been renewed, the bill has gone to the House, which may not take it up until after the August recess. **There is little doubt that a bill similar to the Senate version will pass the House. Some political insiders believe the president will sign the bill in any case, and that his talk of a veto is only posturing for the benefit of the GOP's right wing. However, if Bush does veto the bill, the word within the civil rights community is that he will be killing Republican hopes of bringing more blacks into the party.**

Andrew Young Heads for a Runoff in Georgia

After ballots were tallied in Georgia's July 17 primary, ANDREW YOUNG, who has been mayor of Atlanta, congressman, and ambassador to the United Nations, ended up without enough votes to win the Democratic nomination for governor. Young came in 11 percentage points behind Lieutenant Governor ZELL MILLER, the leader in the contest, though many observers had expected a spread of no more than five percentage points between the two. Since none of the four Democratic candidates won a majority of the votes, Miller and Young, the top two vote getters, will face each other again in an August 7 runoff. Miller won 41 percent of the primary vote, Young 29 percent, State Sen. **ROY BARNES** 20 percent, State Rep. **LAUREN MCDONALD** six percent, and former governor (and one-time staunch segregationist) **LESTER MADDOX** only three percent. State Rep. **JOHNNY ISAKSON** won the Republican primary.

In the Georgia campaign, Young and Miller, both political moderates, are largely competing for the same constituency among white voters. The race has been dominated by debates over how to improve education in the state and whether Georgia should institute a state lottery. Young pledged that as governor he would focus on economic development and devote 55 percent of the state's budget to education. He would use this increase in educational expenditures to address the crisis in the availability of teachers, in part through a fellowship program designed to recruit young Georgians into the profession. Miller advocates similar educational improvements but would pay for them with the proceeds of a new state lottery. Miller's six-week television blitz advocating the lottery helped expand his popularity. Young personally opposes a lottery, but would not be against a referendum on it.

There were similarities between the Young campaign and that of black Virginia governor **L. DOUGLAS WILDER**, elected last year. Like the Wilder campaign, Young's campaign has deemphasized race and focused on issues. But there are also sharp differences. Wilder had the advantage of being nominated through Virginia's caucus system and did not have to survive the rough-and-tumble of a multicandidate primary. He also had the benefit of having served in the state senate for 16 years and as lieutenant governor for four years before becoming governor, experience that gave him a statewide political network rather than a political base limited to one urban center. **Young is closely identified with Atlanta, a large dynamic city, whereas Georgia's population is predominantly rural. Some observers think that Young's success in his two terms as Atlanta mayor and representing the city in Congress may actually be hurting him. "There is a great deal of anti-Atlanta sentiment around the state. This may be a bigger negative than his [Young's] being black," says BILL SHIPP, a political analyst and former columnist with the *Atlanta Constitution*.**

Like the rest of the nation, Georgia is not yet colorblind and race was definitely a factor in the primary. Having taken his campaign around the state, Young had predicted that he would run more strongly in predominately white areas than exit polls from the July 17 primary indicated he did. The fact that Young had been actively involved in the civil rights movement and served as one of Martin Luther King's top aides may have been a plus from the perspective of the black electorate. But observers speculate that it has made many white voters reluctant to support him. At the same time, some of Young's advisors admit that his campaign failed to sufficiently energize black voters, whose lack of enthusiasm was demonstrated by their low turnout at the polls.

Human Rights Violations Increase Worldwide

Human rights violations, such as detention of prisoners of conscience, torture, and executions, increased around the world in 1989 according to the newly released annual report of London-based Amnesty International. The 29-year-old Nobel Peace Prize winning organization documented 2,229 executions of prisoners last year in 34 countries, including the U.S. (Amnesty opposes the use of capital punishment for any reason). That number is significantly worse than the 1,903 executed in 1988.

According to the report, human rights violations seem to be spreading across a wider portion of the globe. Between 1988 and 1989, the number of countries rose slightly concerning the use of torture and the ill-treatment of prisoners (96 countries in 1989), deaths from such treatment (40 countries), and unfair political trials (31 countries). Meanwhile, a 25 percent rise occurred in the number of countries where executions without trial have taken place (now 40 countries) and where individuals have "disappeared" (now 20 countries). The report notes that

these violations occurred without regard for the age or sex of the victims. They included people from all walks of life—trade unionists, journalists, lawyers, political figures, religious leaders, and even children.

Founded in 1961 by British lawyer **PETER BENENSON**, today Amnesty International has more than 700,000 members and subscribers in more than 150 countries and territories. The group's primary goals are to seek the release of prisoners of conscience (people detained anywhere solely for their beliefs); work for fair and prompt trials for political prisoners; and oppose torture and execution. As of July 1990, Amnesty was reviewing or investigating 3,362 cases of identified or possible prisoners of conscience. Since 1961, the organization has followed more than 38,000 such cases. To get emergency help to prisoners and others threatened with torture or death, a network of 4,190 volunteer groups worldwide organizes appeals via telegrams, express letters, faxes, and telexes to prison, police, and government officials in the countries where the rights violations occur. During the first half of 1990 the network has helped 418 people in 63 countries.

Rx for Health Problems of the Poor

The U.S. today ranks distressingly far behind most other industrialized nations in deaths from preventable health problems such as measles among unimmunized children. Death rates from these ailments are disproportion ately high among poor and minority Americans. The infant mortality rate among black Americans is two times higher than it is for whites, and while life expectancy has improved for all racial and ethnic groups in this country has actually worsened for black males over the past two years.

Focusing on what he describes as the unnecessarily adverse health conditions that many poor people fa in this society, Senator Edward Kennedy (D-Mass.) has sponsored a bill entitled the Disadvantaged Minorit Health Improvement Act (S. 1606). The bill is designed to address the inequities in medical services available to chronically underserved minorities in disadvantaged communities, in part by increasing the number of minorities working in the health professions. The legislation would implement some of the recommendations of the "Report of the Secretary's Task Force on Black and Minority Health," first published in 1985 under the direction of then Department of Health and Human Services (HHS) secretary, MARGARET HECKLER.

The bill would provide loans and scholarship grants to students from disadvantaged backgrounds studying in fields such as medicine, dentistry, pharmacy, public health, clinical psychology, and optometry. It would require that half of the loan and scholarship money be provided to institutions where disadvantaged students, including racial and ethnic minorities, constitute at least 25 percent of the total enrollmen:. The bill also authorizes a loan repayment program of up to $20,000 a year for health professionals from disadvantaged backgrounds who agree to serve at least two years on the faculty of schools that meet those requirements. In addition, S. 1606 would fund the investigation of ways to abate the excess morbidity and mortality among poor and minority Americans caused by preventable diseases related to tobacco and alcohol use, drug abuse, poor diet, and inadequate prenatal care. HHS data show that more than 60,000 deaths among blacks could be prevented annually if they received health care equivalent to that received by most white Americans.

The funds authorized for S. 1606 would begin with $75 million in FY 1991, $122 million in FY 1992, $156 million in FY 1993, and $91 million in FY 1994. The Act would authorize $10 million for the secretary of HHS to issue grants and contracts to those institutions with exemplary records of serving minority communities and employing minority doctors, nurses, and other health care professionals. Dr. **VIVIAN PINN-WIGGINS**, president of the National Medical Association, who testified before the House Subcommittee on Health and the Environment, adds that these funds will "support those minority and other institutions that are in the forefront of providing access to medical education, as well as to provide incentives to those institutions not actively providing such opportunities at the present time."

The measure passed the Senate by voice vote on November 10, 1989. A House version (H.R. 3240), sponsored by U.S. Rep. LOUIS STOKES (D-Ohio), is now in the House Energy and Commerce Committee, but it is uncertain whether the full House will act on it before the end of the congressional session.

Cleveland C. Woodson, a summer intern at the Joint Center, was a contributing TL reporter/writer this month.

Across the Nation

CALIFORNIA: Federal district judge DAVID V. KENYON ruled on June 4 that the 1981 districting plan for Los Angeles County must be redrawn because it impairs the ability of Hispanics to gain election to the board. Kenyon ruled that the plan violated the Voting Rights Act and the equal protection clause of the Fourteenth Amendment. There are no Hispanics on Los Angeles County's five-member board of supervisors, even though Hispanics make up 31 percent of the county's 8.6 million people. In fact, no minority group is represented on the board.

The court action resolves a 1988 suit, *Garza* v. *County of Los Angeles*, originally filed by the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union, which claimed that three of the five county election districts were gerrymandered so that Hispanics were not a majority in any. The Los Angeles chapters of the NAACP Legal Defense and Education Fund, the Urban League, and the Southern Christian Leadership Conference were also parties to the suit. **One concern expressed by the black organizations during the suit was that district lines not be redrawn with only Hispanic interests in mind but also consider black electoral representation (blacks make up ten percent of the county's population).**

Remapping is now in progress under Judge Kenyon's supervision. The county submitted a plan which would do little to ensure Hispanic representation on the board and would fragment the black community. Two alternative plans submitted by MALDEF would maintain the integrity of the black and Hispanic communities while creating at least one district from which a minority candidate would have a chance to be elected. MALDEF is preparing yet another proposal, this one for a nine-member board, in order to expand the opportunities for minority representation.

LOUISIANA: State Senator JON D. JOHNSON and attorney MARC H. MORIAL, both black and both from New Orleans, are running for the 2nd Congressional District seat being vacated by retiring nine-term incumbent LINDY BOGGS, who is white. All three are Democrats. The 2nd district, situated in New Orleans, is about 60 percent black. It achieved majority-black status in 1983 as a result of a court-ordered redistricting plan and remains the only majority-black congressional district in the nation not represented by a black member of Congress.

Johnson, who is 41, was a state representative for seven years and a state senator for four years. He considered a bid for Congress in 1984 but decided against it, in part because the popular Boggs indicated then that she would only run for one more term. The owner of a fast-food franchise and a business professor at Southern University in New Orleans, Johnson says that, if elected, he would focus most of his energies on economic development. In the last session of the Louisiana legislature, he succeeded in getting a minority bonding assistance bill passed. Recognizing that minority businessmen are often impeded from bidding on construction projects because they are unable to get bonding, the measure provides for the state to make or guarantee surety bonds to minority contractors.

Marc Morial, 32, is the son of the late two-term mayor Ernest 'Dutch' Morial of New Orleans. The younger Morial came into the race relatively late, announcing his candidacy in July. An attorney with a private practice in his own law firm, he has never held elective office though he has served as legislative aide in Washington to the late U.S. Rep. MICKEY LELAND (D-Tex.) and to former U.S. Sen. RUSSELL LONG (D-La.). Morial has served as the general counsel of the Louisiana Voter Registration Education Crusade since it was formed in 1984, and in 1987 he successfully sued the Orleans Parish Registrar of Voters to stop the purging of thousands of citizens from the voting rolls. Morial also drafted the South African divesture legislation adopted by the New Orleans city council. If elected, Morial says he would work for job creation and address the city's growing drug problem.

Meanwhile, Johnson, who has already spent $50,000 on television ads, plans to raise $500,000 for his campaign. **The primary, which is open to candidates of all parties, will be held October 6. In Louisiana, if a candidate wins a simple majority of the votes in the primary, no general election is held.**

VIRGINIA: An important civil rights battle was lost on June 4 when the U.S. Supreme Court, by refusing to review lower court rulings, upheld Virginia's system of appointed school boards. Charging that the current system is discriminatory, the black citizens of Petersburg and four rural counties, represented by the American Civil Liberties Union, had asked the federal courts to order the state to institute school board elections. In letting the lower court ruling stand, the Supreme Court has closed one more chapter in the long fight to establish elected boards in Virginia.

In the case, *Irby* v. *Virginia State Board of Elections*, the state argued that because the current statewide percentage of blacks on Virginia's school boards (18 percent) roughly equals the black percentage of the population, the system is sufficiently representative. But the plaintiffs argued that black distribution on local boards is uneven. They noted that at the time of the trial, 51 of the state's 136 school boards had no black members. In Buckingham County, which is 42 percent black, the seven-member board has not had more than one black member at a time since 1971.

The plaintiffs presented evidence to show that Virginia's appointed system has been deliberately maintained to exclude blacks. Historians testifying for the plaintiffs pointed out, for example, that in 1947 the state general assembly made an exception in the law to allow Arlington County to elect its school board. But when that elected board accepted a court-ordered school desegregation plan in 1956, the assembly rescinded the county's authority to elect its board members.

In the case at hand, the appeals court accepted this history as evidence of Virginia's earlier intent to discriminate, but ruled that more recent actions by the state absolved it. Specifically, the court cited a 1984 decision by a committee of the Virginia legislature to leave the appointment system intact, a decision reached after a series of public hearings held around the state. "This ruling could set a dangerous precedent if it is accepted by other federal courts," says **PEYTON McCRARY**, a history professor at the University of South Alabama and a former research fellow at the Joint Center. McCrary, who testified as an expert witness for the Virginia plaintiffs, adds, "The decision would allow courts to ignore smoking-gun evidence of legislative intent to discriminate, as long as legislators have subsequently affirmed the law while keeping their mouths shut [about its racial purpose]."

Black Benevolence: An American Tradition

The Centuries Old Heritage of Black Philanthropy in the U.S. Continues to Thrive Through Institutions and Individuals Across the Nation

by David C. Ruffin

A bronze statue of Abraham Lincoln stands in one of Washington D.C.'s oldest parks. The statue was erected in 1874 by the black employees of the Western Sanitary Commission of St. Louis and was inspired by Charlotte Scott, a former slave from Virginia. Scott, who conceived of the memorial when she learned that Lincoln had been assassinated, launched the project with five dollars, her first earnings as a freed woman. All other contributions were made by former slaves as well.

On his death in 1892, Primus P. Mason, a wealthy black New Englander from Springfield, Massachusetts, bequeathed an endowment of $333,400 for the establishment of a home for elderly men (the sum would be equivalent to well over a million dollars today). Born as a free person in 1817, Mason was a self-made businessman who prospered from his extensive real estate holdings.

A.G. Gaston, a 97-year-old Birmingham, Alabama, multimillionaire, is one of the unsung giants of the civil rights movement. The owner of the Booker T. Washington insurance company, a motel, and other enterprises, Gaston was an early financial supporter of the Southern Christian Leadership Conference. He put up $2,500 to bail Martin Luther King, Jr., out of jail after he was arrested during a civil rights demonstration. Gaston also provided free rooms to civil rights workers in his motel. More recently, he has formed student loan funds at Stanford University and the University of Alabama, and he contributes to the YMCA and the A.G. Gaston Boys Club as well as to churches and hospitals.

These examples of benevolence by black Americans, far from unique, belie the myth that blacks are always on the receiving end and never the giving end of charity. Indeed, a strong tradition of black philanthropy predates the Republic. Within the context of their unique circumstances, black people in the United States have always practiced some form of collective philanthropy. Even in antebellum times, free blacks formed benevolent societies to empower their families and resist the encroachment of slavery, which threatened everyone of African descent.

"Traditionally, blacks have been communal givers. People who individually had little pooled their resources to support small-ticket-item philanthropy or to meet an immediate need," says Dr. Emmett Carson, assistant program officer at the Ford Foundation. Formerly a senior research associate at the Joint Center, Carson is the author of a forthcoming Joint Center report on black philanthropy which is based on his research. He found that black Americans from all socioeconomic backgrounds are engaged in charitable activity at levels equal to or greater than that of white Americans.

Nevertheless, the advent of black foundations as institutions for structured, systemized giving—free of the fits and starts of crisis charity—is a relatively new phenomenon. Most black foundations were established within the last two decades. They differ from larger mainstream foundations in that the issues they deal with are closer to home. The mission of most black foundations is to address community problems and focus on improving the education or the socioeconomic status of lower-income blacks.

Learning to Survive

For blacks in America, the quest for knowledge has been costly. The educational empowerment of blacks, or indeed of any minority, has often met resistance from the majority society. Slaves who learned to read were brutally punished. The struggle for equal education during the civil rights movement was opposed—often violently. Even today, a good college education often comes with a price tag that puts it beyond the reach of most black Americans. It is not surprising then that the majority of black philanthropic institutions are dedicated to education.

Many black educational foundations have an organizational base, such as a church, fraternal organization, or professional association. Alpha Kappa Alpha (AKA) sorority, like several other black Greek letter organizations, operates an educational charity. The AKA Educational Advancement Foundation, headquartered in Chicago, supports two one-year scholarship programs for male and female college and graduate students. The sorority awards merit scholarships of $1,000 to students based on academic performance, and $1,500 financial-assistance grants based on need. Fourteen awards were made in 1988 and 21 were made in 1989.

The Jackie Robinson Foundation (JRF), unlike education funds sponsored by groups or associations, was established by an individual—Rachel Robinson, the wife of the national hero who in 1947 broke the color bar in professional baseball. Launched in 1973, the year of Robinson's death, the foundation is currently assisting 84 students who attend some of the nation's finest universities through four-year scholarships totalling $350,000. This year, 25 awards will be

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made to a new crop of recipients.

Operating without an endowment, JRF raises its annual budget of $800,000 through contributions from corporations, individuals, and an annual awards dinner. Practically every major league baseball team contributes at least $10,000 to the Foundation each year as well. Another important source of funds is an annual jazz concert which attracts volunteer performances from such musical giants as Ella Fitzgerald, Lionel Hampton, and Wynton Marsalis. A family tradition, the first concert was given in 1963 on the lawn of the Robinson home in Stamford, Connecticut, to support Martin Luther King's civil rights activities.

Yet another organization, the Educational Foundation for Black Americans, based in Los Angeles, sprang from the desire of its wealthy black benefactors, Matthew and Roberta Jenkins, to give something back to their black community. From the time they met as college students, the Jenkinses felt a need to share their good fortune with others, and they routinely contributed to causes they thought were worthy. In 1965, the couple bought a trailer park on a whim and started turning a profit right away. By 1984 they formally established the foundation. The Jenkinses now own 14 trailer parks in seven states and have provided over $200,000 to needy college students through revolving loan funds at Tuskegee Institute in Tuskegee, Alabama, and at Compton College in Compton, California.

Foundations With a Difference

Black philanthropists and charitable institutions support many other causes besides education. Of the many ways and reasons foundations come to be, the small W. Harry Davis Foundation, which serves the black community of Minneapolis, is one of the more unusual; it was literally financed by love.

It all started in 1982 when a black humanitarian surprised his friends and community by not dying as they expected him to. Davis, known for a lifetime of service as a social service worker, Golden Gloves organizer, and school board member, was informed that he had Parkinson's disease and had only six months to live. As a tribute to Davis, all sectors of the Minneapolis community held a "farewell" dinner and fundraiser for him, but four days later his disease went into remission. According to his doctors, the advance of Davis's illness was arrested by the love of the community.

The $40,000 raised at the dinner was used to establish the foundation bearing Davis's name, which has since been supported by major corporations and is still going strong. Over the years it has contributed about $10,000 a year to youth and adult job training and to black business development programs. Davis, by the way, is still going strong.

The style of operation and the character of their contributions make black foundations unique. The Booker T. Washington Foundation, located in Washington, D.C., doesn't give away money. Instead it identifies market opportunities in new technologies and growth industries that black entrepreneurs can take advantage of. The POISE Foundation of Pittsburgh encourages black people—especially young people—to enter the business and professional world. Two years ago, popular singer Dionne Warwick formed the Warwick Foundation to support AIDS education programs and fund health facilities for AIDS victims and their families.

Some individuals who start black foundations are neither wealthy nor famous. One Maryland family created a charitable fund with its own resources. The gentle voice of Frances "Frankie" Newman cracks a little when she talks about how she and her husband Alfred, both retired, took $50,000 of their own funds to establish the Jackson-Newman Foundation in 1983. It was the year after their son, Ronald, who had suffered from cancer for 17 years, died at age 31. "The trauma of this tragedy inspired us to create an organization that would help other families deal with terminal illness," says Newman.

The Givens Family Fund in Minneapolis has provided the money to purchase a large collection of African-American literature. Archie Givens, the benefactor of the fund, had become a millionaire as a nursing home operator. The materials in the collection, now preserved at the University of Minnesota's Wilson Library, encompass works from the Harlem Renaissance and include manuscripts and letters from black poet Countee Cullen.

Deep Pockets and Corporate Citizens

There has been a recent wave of philanthropy from a new generation of wealthy black celebrities and entrepreneurs. When mega-entertainer Bill Cosby made a direct personal gift of $20 million to Spelman College in Atlanta, everyone took notice. Cosby is just one of the more visible wealthy black individuals who contributes to causes directly rather than through a philanthropic institution. Others who have given in this way include actress and TV talk show celebrity Oprah Winfrey, Yankee outfielder Dave Winfield, and former Washington Redskins quarterback Doug Williams.

The foundation created by Reginald F. Lewis, black CEO of TLC Beatrice International Holdings, Inc., contributed $2 million last year to a wide variety of charities. TLC Beatrice, a food production and distribution corporation which grossed $1.3 billion in sales in 1989, ranks among Fortune 500 companies in size. Lewis has contributed to the NAACP, the Dance Theatre of Harlem, and a number of institutions of higher education including his alma maters Virginia State College and Harvard Law School.

While black foundations today have their roots in the benevolent societies of slave times, they've come a long way since then. There is every indication that philanthropy in the black community will continue to spread and find expression through a myriad of foundations and the personal styles of individuals. Similarly, the number and types of causes supported through black benevolence is also likely to grow. Whether its purpose is to provide college scholarships or encourage entrepreneurship, the American tradition of black philanthropy will expand for decades to come. ■

Black Votes Count

A Review of Civil Rights Attorney Frank Parker's New Book on the Legal Struggle to Gain Voting Rights for Blacks in Mississippi

by Peyton McCrary

When the Voting Rights Act was adopted in 1965, only seven percent of Mississippi's black adult population was registered to vote, and no blacks held public office apart from those in a handful of all-black towns. But by January 1989, when Frank Parker's new book *Black Votes Count* went to press, Mississippi had 646 black elected officials, more than any other state.

Parker, director of the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law in Washington, D.C., and formerly a MacArthur Foundation Distinguished Scholar at the Joint Center (in 1985), is among the most respected voting rights attorneys in the nation. A social activist, he spent more than a decade fighting racial injustice in Mississippi before coming to Washington in 1981 to lobby for a stronger Voting Rights Act. His book will surprise many by its dispassionate scholarly tone and careful documentation. The weight of academic authority, nevertheless, does not slow the pace of his compelling story of black political empowerment in Mississippi.

The most obvious factor contributing to that empowerment was the elimination of virtually all barriers to registration and voting through the enforcement of the Voting Rights Act. Parker documents for the first time, however, another essential cause of the transformation of Mississippi politics over the last quarter century: litigation. On behalf of black plaintiffs, civil rights lawyers like Parker himself took the state to court year after year, ultimately winning their and thus establishing fair election procedures.

Conservative critics of the Voting Rights Act, including the legal scholars who testified against its revision in 1982, have argued that minority plaintiffs and the Department of Justice should be required to prove that each election law under challenge was motivated by intentional racial discrimination rather than relying on a statistical demonstration of discriminatory effect. Yet in Parker's book, evidence of deliberate racial discrimination jumps from every page, reminding us why the Voting Rights Act was necessary in the first place.

In 1962, for example, Mississippi's legislature passed a law requiring 45 cities with a mayor-council form of government to switch from ward to at-large elections. The (white) author of the statute urged its passage by asserting that "this is needed to maintain our way of life." Until struck down by the federal courts 13 years later, that at-large system saw virtually all black candidates losing in city-wide elections despite carrying the black-majority wards in which they resided. A similar statute adopted by the state in 1966, after the Voting Rights Act was passed, authorized supervisors to eliminate the system of single-member district elections that had been used in Mississippi for almost a century. During the debate over this bill, one state legislator was blunt about these new at-large elections: "the countywide balloting will safeguard a white board and preserve our way of doing business."

Parker explains that lawyers for black plaintiffs launched court challenges to this and several similar laws that would dilute the effectiveness of minority votes. They lost before reactionary Mississippi judges, but appealed successfully to the U.S. Supreme Court. In a 1969 opinion, *Allen* v. *Board of Elections*, the Court ruled that under Section 5 of the Voting Rights Act, all electoral changes adopted by state law or local ordinance that might dilute minority voting strength would have to undergo "preclearance" by the Civil Rights Division of the Department of Justice.

It would be comforting to report that intentional vote-dilution is a thing of the past, but such a rosy view is contradicted by the facts. Parker summarizes the statistical evidence presented by social scientists as expert testimony in voting rights cases over the last two decades. Their testimony documents patterns of racially polarized voting even today. A careful reading of *Black Votes Count* will persuade many scholars to pay more attention to the scientific evidence summarized in court opinions.

Conservative legal scholars who spend their time analyzing court decisions rather than electoral behavior assert that racially polarized voting is the exception rather than the rule in the South. They criticize the Voting Rights Act as an unnecessary intrusion into state regulation of the electoral process. In light of Parker's evidence, however, the belief that a significant number of Mississippi whites regularly vote for black candidates can only be called an illusion.

Black Votes Count, published by the University of North Carolina Press, is an important work that breaks new ground in its interdisciplinary analysis of the impact voting-rights litigation has on politics. Because the author himself played a major role in bringing about the changes he describes, it is also, in a quiet way, a monument to Frank Parker's extraordinary career as a civil rights lawyer. ■

Mr. McCrary, a frequent expert witness in Southern voting rights cases, is professor of history at the University of South Alabama. In 1987-88 he was the MacArthur Foundation Distinguished Scholar at the Joint Center.

Affirmative Action Victory

(Continued from page 4)

all *Croson* means is that you have to get it right. That is, by restructuring to meet the guidelines articulated in *Croson*, set-aside programs will pass constitutional muster."

What We Learned From This Term

The Court this term offered a number of surprises to liberals. It endorsed the power of federal judges to order taxes to pay for school integration. It declared a brand-new constitutional right to refuse medical treatment, even if the refusal causes death, in the *Crusan* v. *Missouri* right-to-die case. It reaffirmed the right of women to have abortions without excessive interference from the state in *Hodgson* v. *Minnesota* and *Ohio* v. *Akron*. And, for the second time, it upheld the First Amendment right to burn the U.S. flag.

"The biggest implication of this term is that the conservative majority is not quite the majority everyone thought it was," says Arnwine. We have learned a few other lessons about the Rehnquist Court. According to Arnwine, "One of the most positive signals is that Justice White shows greater sensitivity than before toward the necessity of enforcing the 14th Amendment."

We've also learned more about the Reagan appointees. Says Arnwine, "Kennedy and Scalia are tied to each other even more strongly [as conservatives]. And most disturbing, O'Connor, who used to be considered the swing vote, has become a solid vote in the conservative majority."

Cases to Watch Next Term

Arnwine warns that the civil rights community cannot afford to rest, since there are several very important cases the Supreme Court will decide next term. Two of the most important are described below.

Board of Education of Oklahoma City v. *Dowell*. A school busing suit will determine when a school desegregation plan should be disbanded. Civil rights groups fear the Court will use the case to weaken school integration. Nearly 500 school districts under federal court-ordered supervision to integrate may be affected by the outcome.

U.A.W. v. *Johnson Controls, Inc.* A Wisconsin sex discrimination suit will consider whether employers should be held to a strict scrutiny standard when they use so-called fetal protection policies to bar women from employment. Civil rights and women's groups argue that the policies are an excuse for discrimination. ■

Book Announcement: *Black Votes Count*

Mississippi has made strides in guaranteeing political justice, but the struggle isn't over yet, concludes Frank Parker in his new book *Black Votes Count* (reviewed on page 7). The book, with a foreword by Eddie N. Williams, is available from University of North Carolina Press, P.O. Box 2288, Chapel Hill, N.C. 27515-2288 (toll-free: 1-800-848-6224). Paper: $12.95; cloth: $29.95. *Focus* subscribers will receive a 20 percent discount.

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