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Court Deals Setback to Minority Set-Asides

A U.S. Supreme Court Ruling Further Restricts Minority Business Set-Aside Programs and Threatens the Viability of Affirmative Action Policy

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The Congressional Black Caucus Is Adjusting to Disabling Rules Imposed on It by the Republican Leadership of the U.S. House of Representatives

POLITICAL TRENDLETTER | **PERSPECTIVE**

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The GOP's Questionable Priorities

A number of federal social programs need to be reformed and improved. No doubt about it. But the new Republican-controlled Congress wants to give us a dose of medicine that will bring on side effects far worse than the problems they are trying to solve.

In the House, for example, Republicans have spent a lot of time and energy passing what they call the "Personal Responsibility Act of 1995"—a questionable elixir that is allegedly a cure for poverty. In this component of their "Contract With America," they propose to push mothers off welfare and into jobs, some of which don't even exist today. This so-called reform defies logic in the eyes of most experts in this field. And it becomes conspicuous if not suspicious when these reformers refuse to cut off welfare for the well-off segments of our society. Corporate welfare is an apt term for the huge federal subsidies and tax write-offs given away to big business, but it's a phrase that the House Ways and Means Committee chairman, Texas Republican Bill Archer, has forbidden his committee staffers to use.

The Republican welfare reform bill may end up being an albatross around the necks of GOP legislators. Its estimated $69 billion in cuts over five years would snatch from the poor income guarantees of programs like Aid to Families with Dependent Children (AFDC). Federal funding for food stamps, child nutrition, and child care programs would also be cut. Legislators defended their support of this bill with high-sounding rhetoric about balancing the budget.

But they didn't acknowledge that they were sacrificing the poor to accomplish this objective, nor did they address the question: If it makes good fiscal sense to cut the poor, then why doesn't it make even better sense to cut tens of billions of dollars in federal subsidies for upper-income Americans? For example, agribusiness gets billions in price supports and in payments for not planting specified crops. In the field of energy, billions can be saved by eliminating research and development grants to the fossil fuel and nuclear energy industries, which can afford to support their own development costs. And what about amending the 1872 Mining Act to increase the 8 percent royalty to the federal Treasurer on minerals recovered from *public* lands? None of these programs are on the chopping block.

Recently, the House passed a bill that would force the Pentagon to build 20 B-2 bombers that the Pentagon itself doesn't want—at a cost of $1.4 billion apiece. Adding these bombers to the U.S. military arsenal today is an affront to the intelligence of the American people. The Secretary of Defense and the Joint Chiefs of Staff fear that buying the bombers will draw money away from readiness programs and other high priority defense needs. Such unnecessary expenditures also take food, clothing and shelter from poor kids and their parents. This double standard leads one to question the priorities contained in some of the Republicans' legislative agenda.

More equity is certainly called for. If legislators are serious about cutting welfare programs that benefit the poor to balance the federal budget, they should be just as serious about cutting welfare programs that benefit the well-off. Americans expect and deserve fairness and common sense from their elected leaders, whether they are Republicans or Democrats. Registering and voting is one important way of passing judgment on those who fail to measure up to these standards. ■



PRESIDENT

FOCUS

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Court Deals Setback to Minority Set-Asides

A U.S. Supreme Court Ruling Further Restricts Minority Business Set-Aside Programs and Threatens the Viability of Affirmative Action Policy

By Frank R. Parker

Supporters of affirmative action were disappointed this month when the U.S. Supreme Court handed down its *Adarand Constructors* v. *Pena* decision. While the ruling does not declare any affirmative action program unconstitutional, it takes a step back from earlier Supreme Court rulings that affirm race-based remedies for discrimination and will make the job of implementing affirmative action programs in the future more difficult.

The case revolves around Adarand Constructors, a highway construction company that specializes in guardrails. Adarand lost its low bid to put up highway guardrails on a federally-financed Colorado highway project in the San Juan National Forest in 1990. Because the contract went to a minority-owned company with a higher bid, Gonzales Construction Co., Adarand, a white-owned firm, sued U.S. Secretary of Transportation Fredrico Pena and other officials for racial discrimination. On June 12 the U.S. Supreme Court, by a narrow 5-to-4 vote, upheld the firm's claim.

But the Court's decision is far more significant than its ruling that denying Adarand the contract violated the company's constitutional rights. The *Adarand Constructors* v. *Pena* case is part of a major assault on *all* affirmative action programs. Even worse, the decision indicates that today's Supreme Court is no longer willing to permit racial-based programs it previously upheld that are designed to ensure that racial minorities are fully included in the economic, political, and social life of the nation.

The *Adarand* decision turned on the constitutionality of a highway construction appropriations law, the Surface Transportation and Uniform Relocation Assistance Act of 1987, that is administered by the U.S. Department of Transportation. The law required that 10 percent of the appropriated funds to support the program be expended on contracts with "small business concerns owned . . .by socially and economically disadvantaged individuals." Unlike previously established minority business set-aside programs, this one is not exclusively targeted to minorities and did not constitute a traditional minority set-aside program. Under Department of Transportation regulations, firms owned by minorities and women are presumed to qualify. Federal policy has specifically designated African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans as socially and economically disadvantaged.

But white-owned and male-owned firms may qualify if they can prove they meet the department's criteria for social and economic disadvantage. Also, the program does not set aside 10 percent of highway construction subcontracts for minorities. Instead, the principal contractor receives a 10 percent bonus for every subcontract it awards to a "disadvantaged business enterprise," with such subcontracts not to exceed 2 percent of the original contract amount.

Although a federal district court and a U.S. court of appeals sustained the program, the Supreme Court held that, because it classified companies bidding for highway contracts on the basis of race, the program was unconstitutional unless the government can prove it is "narrowly tailored" to "further compelling governmental interests." But the Supreme Court stopped short of declaring affirmative action unconstitutional, and it remanded the case back to the lower court.

Strict Scrutiny

The burden of "strict scrutiny" is a difficult one. The Supreme Court has approved only a narrow range of justifications under this test and has rejected reasons to maintain set-aside programs such as the need to remedy discrimination against minorities by the society at large and the need to correct racial imbalance in awarding contracts. When affirmative action programs are held to standards of strict scrutiny, it means that minorities who benefit from such programs frequently lose. If the program, however, is held to an intermediate level of scrutiny, minorities will have a better chance of winning.

The *Adarand* decision represents a dramatic reversal of the Court's previous tolerance for race-based remedies for discrimination approved by Congress. In the past, the Court ruled that because Congress has express authority to pass legislation to implement the equal protection clause of the Fourteenth Amendment, it has greater flexibility to adopt race-based programs than the states. For example, in the *Fullilove* v. *Klutznick* case in 1980, the Court approved a minority set-aside contracting program passed by Congress. Ten years later, in *Metro Broadcasting, Inc.* v. *FCC*, the Supreme Court upheld a federal program to increase the number of broadcast licenses awarded to minorities, not to remedy past discrimination, but to promote broadcast diversity.

State and local programs, however, were held to a stricter standard. In *City of Richmond* v. *J.A. Croson Co.* (1989) the Court invalidated the City of Richmond's minority business set-aside program, ruling that it failed to meet the strict scrutiny test. In the *Adarand* case, the Court reversed its *Metro Broadcasting* decision, sharply limited its

Continued on page 4

Mr. Parker is a professor of law at the District of Columbia School of Law and a visiting scholar at the Joint Center.

Set-Asides

Continued from page 3

ruling in *Fullilove* v. *Klutznick*, and held for the first time that federal affirmative action programs are subject to the same strict scrutiny standard that the *Croson* decision mandates for state and local programs.

The impact of the *Croson* ruling was devastating. Within a year after the Court handed down that decision, lower courts used the ruling to declare several state and local set-aside programs unconstitutional. As a response to the decision, many more jurisdictions elected to abandon their set-aside programs, reduce their goals, or make the goals voluntary. The Washington-based Minority Business Enterprise Legal Defense & Education Fund, Inc. conducted a survey in late 1989 that determined that approximately 230 state and local set-aside programs were terminated. In the last four years however, a number of jurisdictions have established new narrowly tailored set-aside programs to conform to the *Croson* criteria of strict scruitny.

We Are Just One Race

Justice Antonin Scalia concurred with the majority of the Court but sees affirmative action programs as reverse discrimination. In a separate opinion, he said: "In my view, government can never have a 'compelling interest' in discriminating on the basis of race in order to 'make up' for past racial discrimination in the opposite direction. In the eyes of the government, we are just one race here. It is American."

Supporters of affirmative action have called the decision a setback but not a defeat. They point out that the Court expressed the wish to "dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" Civil rights advocates stress that the Court affirmed that government continues to have the power to take action to correct "the lingering effects of racial discrimination against minority groups in this country."

Justice Sandra Day O'Connor was not ready to agree with Scalia's prescription for colorblind government. She acknowledged that discrimination is still a problem in this society, and wrote in the majority opinion that "The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it."

As an example, she pointed to the 1987 *United States*. v. *Paradise* case in which the Alabama Department of Public Safety displayed "pervasive, systematic, and obstinate discriminatory conduct" in excluding African Americans from being hired as state troopers. O'Connor said that the federally imposed numerical goals to increase the number of black state troopers was justified as a narrowly tailored race-based remedy. But the *Paradise* case does not leave a great deal of optimism or reason for celebration since it was based on a federal district court decision finding unlawful discrimination against black applicants for state trooper jobs and resulted in nearly a decade of litigation.

The Court's reasoning in support of its about-face on federal minority preference programs is troubling. In reaching its conclusion, the Court rejected any constitutional distinction between programs designed to include minorities in the economic life of our country and those designed to exclude them. Justice John Paul Stevens, in a dissenting opinion, bitterly criticized the Court's failure to recognize such a distinction. He accused the Court of failing to acknowledge the difference between an "engine of oppression" and an "effort to foster equality in society," between a "No Trespassing" sign and "a welcome mat."

Further, contrary to prior decisions, the Court rejected any difference between race-based programs adopted by Congress, to which the Court traditionally has deferred, and those implemented by state or local governments. Most of the justices in prior decisions—including some who joined the majority decision in *Adarand*—previously recognized that Congress' power to correct racial inequities is broader than that of state governments. In his dissent, Stevens said that it is wrong "to say that Congress' institutional competence and constitutional authority entitles it to no greater deference when it enacts a program designed to foster equality than the deference due a state legislature."

Racial Paternalism?

The decision also provoked an interesting exchange between Justice Clarence Thomas, who voted with the majority, and Stevens, who dissented, on whether affirmative action programs stigmatize their beneficiaries as inferior or unqualified. Thomas argued that affirmative action programs are "racial paternalism" and teach many people that "because of chronic and apparently immutable handicaps, minorities cannot compete with them without their patronizing indulgence." He also contended that these programs "stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are 'entitled' to preferences."

Stevens responded that these criticisms were not applicable to the *Adarand* case because the constitutional challenge was brought by an excluded white firm, not a minority firm, "perhaps because they do not find the preferences stigmatizing." He also thought it unjust to reject any distinction between racial assistance and racial oppression, as Thomas did, and to equate well-meaning members of Congress concerned about assisting minorities with segregationists and bigots. Finally, Justice Stevens noted that he was "not persuaded that the psychological damage brought on by affirmative action is as severe as that engendered by racial subordination."

What long-term impact the decision will have on federal affirmative action programs remains to be seen. President Clinton has promised a review of all such programs and has indicated that he would take the Supreme Court's ruling into account in his review. It is important to note that, in its *Adarand* ruling, the Supreme Court did not rule that any affirmative action program was unconstitutional. But in the future, federal agencies that implement affirmative action programs will have to go about it with a new set of rules. ■

June 1995

POLITICAL TRENDLETTER

Inside This Issue:

- With a quarter of America's children in poverty, GOP congressional leaders are proposing to shred the safety net beneath them, according to the Children's Defense Fund.
- And a recently released report by the United Nations Children's Fund reveals that the United States ranks behind most other industrialized nations in child development.
- The Joint Center's South Africa program expands and focuses on youth.
- U.S. cities continue to lose political clout to the suburbs.

Children's Defense Fund—Putting Children First

The rate of child poverty is higher than at any time since 1964, yet Congress seems intent upon cutting back support to children and their families, according to *The State of America's Children Yearbook 1995*, an annual report published by the Children's Defense Fund (CDF), a Washington-based child advocacy organization.

According to the Yearbook, one of every four children—about 15.7 million in all—lives in poverty, and the number of children who were abused or neglected in 1993 was almost 3 million—three times the number who suffered abuse in 1980. One-third of all children coming of age today will face poverty, drop out of school, or be abused or neglected before they reach adulthood, according to the CDF's projections. Yet, says CDF President **MARIAN WRIGHT EDELMAN**, "There appears to be no moral line House leaders will not cross in their reckless rush to reinvent American social policies and values."

This year's edition of the *Yearbook* presents an often stark overview of the problems afflicting children, including poverty, hunger, and abuse among children. The *Yearbook* charges that the prospects for America's children "worsened dramatically" after last November's election when the Republican Party gained control of the U.S. Congress. The new GOP leadership in the House of Representatives began to pass elements of the "Contract With America" that include a radical agenda to alter support mechanisms for children and families, the federal covenant that has provided a safety net for the poor since the New Deal. For example, the GOP's Personal Responsibility Act would revise the Aid to Families with Dependent Children (AFDC), abrogating earlier government commitments "*not* to allow children to become hungry and destitute, *not* to allow children to remain in abusive or neglectful homes, and *not* to permit our poorest children to suffer from untreated illnesses and disabilities."

Instead of expanding the safety net, the *Yearbook* says, Congress is pushing legislation that would slash gaping holes in it by repealing the entitlement status of AFDC, food stamps, school lunch subsidies, and similar programs that are supposed to guarantee a level of support to all children in need. The structure of need-based entitlement programs allows the funding to grow when need grows—during economic recessions, for example—and shrink when need declines. But the GOP legislation would shift to the states many costs and programs now assumed by the federal government by folding them into block grants, without assurances of automatic adjustments.

"Just as we do not put 75-year-old retired workers on waiting lists for Social Security, we should not put hungry children on waiting lists for food or sick children on waiting lists for health care," says the *Yearbook*. "Yet we now seem to be on the verge of forgetting why child survival programs are funded on this 'entitlement' basis."

The CDF is concerned that some states will not act responsibly with the block grants. It cites experience with the food stamp program in the late 1960s when doctors found that poor children in some Southern states suffered disproportionately from malnutrition. At that time, states had been allowed to establish their own eligibility guidelines for food stamps. Some states set extremely restrictive guidelines, and some counties didn't participate in the program at all, so that many poor people who needed the aid could not receive it.

Before Congress now are proposals to cap AFDC benefits, rigidly limit the length of time people can receive them, and enforce work requirements on recipients without also providing adequate education or job training to

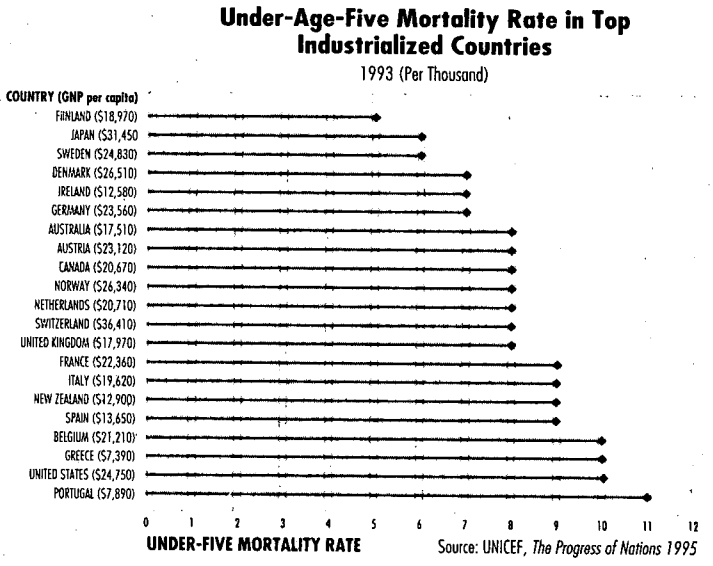
prepare them for today's jobs. These proposals, the CDF warns, are short-sighted and do nothing to address the long-term causes of poverty.

At a time when so much is at stake, Edelman asserts that Americans must hold public leaders accountable, as well, "for fair, just, and effective policies for children. A nation that would rather send someone else's child to prison for $25,000 a year or to an orphanage for over $36,000 a year than invest in $300 worth of immunization and $1,000 worth of prenatal care to give that same child a healthy start... lacks both family values and common and economic sense," she says. Edelman looks forward to the day when "our nation may regain its moral and common sense and act to put our children first."

by Joye Mercer Barksdale

The World's Imperiled Children

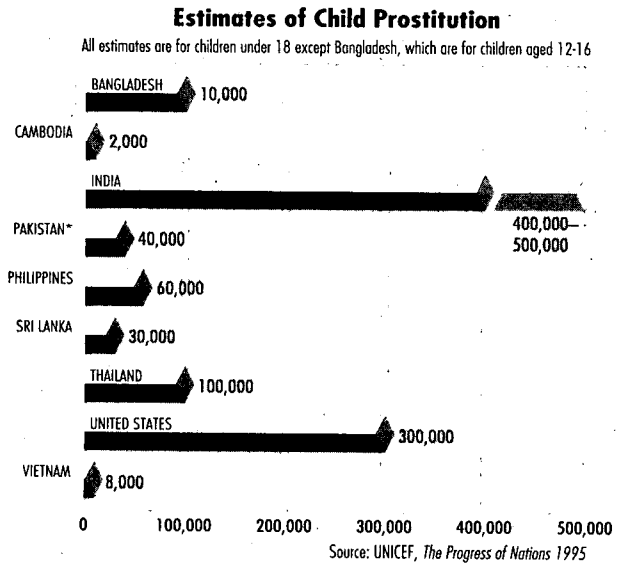
The United States is ranked near the bottom of the world's top 21 industrialized nations when it comes to protecting its children from early mortality, prostitution, and illegal labor, according to a report published by the United Nations Children's Fund (UNICEF), *The Progress of Nations 1995*. The U.S. also was lowest on the list—with France and New Zealand—in primary education. While 100 percent of children in Finland and Japan reach the fifth grade, for American children the rate is 94 percent.



Most child deaths are attributable to diarrhoea, pneumonia, malaria, malnutrition, and vaccine-preventable diseases. Yet among the top 10 richest nations, the U.S.—with Belgium—ranked highest in child mortality. At the 1993 rate, for every thousand children born in this country, ten did not survive to their fifth birthdays (see chart). The Republic of Czechoslovakia and Slovenia had the same mortality rate for children under five years old in that year, as did Cuba, whose GNP per capita then was one-twentieth of that of the United States. Hong Kong, the Republic of Korea, and Singapore all had *lower* under-five mortality rates than the U.S.

Rates for under-five deaths generally decrease with increasing GNP. UNICEF measured the actual performance of each country against an expected performance level, which was based on GNP per capita and other relevant social variables. All 21 industrialized countries *exceeded* expectations on under-five mortality except Switzerland and the United States.

UNICEF and the World Health Organization instituted an international standard for hospital maternity wards in 1989. Out of the 3,000 "baby friendly" hospitals identified by UNICEF by 1995, *not one* is located in the United States.



Child prostitution is a serious problem mainly in poor countries, but the UNICEF report reveals the United States is afflicted to a great extent as well—with an estimated 300,000 prostitutes under age 18. The organization gives conservative estimates because of the lack of accurate statistics but is confident its figures are reliable minimum measures. Numbers are available for only a few individual countries (see chart), but the organization puts the total number of children involved in prostitution at over two million worldwide.

Even outside of organized prostitution, the sexual exploitation of children is rampant, and in some places AIDS and other sexually transmitted diseases are being spread to children at near epidemic rates. In Thailand, a study found that one third of the children involved in prostitution tested HIV-positive. The report also indicates that many of those who prey on child prostitutes are from industrialized countries. Of 160

foreigners arrested in Asia for sexual abuse of children between 1992 and 1994, 25 percent of the accused were American, 18 percent German, 14 percent Australian, 12 percent British, and 6 percent French.

As for child labor, the exploitation of children in the workplace could end with the enforcement and encouragement of school attendance. Again, clear data on the extent of this problem are hard to get. Most information comes from government surveys that frequently understate the problem of illegal labor practices. The International Labour Organisation reported a total of nearly 80 million children under 15 are in the workforces of 124 nations. UNICEF says the total for all nations may be double that figure. According to a survey completed in 1993 by the National Safe Workplace Institute, the number of children employed illegally in the United States was about 5.5 million.

by Theresa Kilcourse

Joint Center Lauches Youth Initiative in South Africa

The Joint Center's South Africa Democracy Support Project recently launched a new initiative concentrated on youth development in South Africa. The initiative is being carried out with the cooperation of the Johannesburg-based South African National Youth Development Forum (NYDF). The focus of the program is a series of provincial and national workshops sponsored by the Joint Center and NYDF to address the problems of youth in South Africa.

During the week of April 3-7, three international teams were sent to eight of South Africa's new provinces to convene the first workshops on "Ensuring a Future for Out-of-School Youth." The Joint Center and NYDF staff were joined by South African and international consultants from Zambia, England, and the United States to engage South African youth and youth advocates in an intensive problem-solving policy development process. Over 200 youth and youth advocates participated in the workshops. (The local concept of "youth" in South Africa includes everyone from age 16 to 35.) The workshops serve as a reminder that the country's most precious resource is its younger citizens.

Under the Reconstruction and Development Program, President **NELSON MANDELA'S** blueprint for South Africa's economic future, successful youth development will require that special concerns be addressed in the areas of education, skills training, employment, and health care. According to research conducted by the Community Agency for Social Enquiry, a local social research institution, lack of education is a major problem with roughly 60 percent of those entering the first grade dropping out by the end of elementary school. Approximately 1.2 million youth have only a primary-school education, while close to 100,000 have not attended school at all. Sixty-nine percent of the youth interviewed for the study said they desired an opportunity to continue with their education but lacked the funds.

Unemployment among South Africa's youth is particularly accute. According to government statistics, nearly 70 percent of unemployed South Africans are younger than 35 years of age, and the majority of them are women. The South African economy at present cannot absorb those entering the labor force for the first time in addition to those who are already seeking jobs. Between 1980 and 1990, the apartheid economy created roughly 503,000 new jobs, but there were 3.3 million job seekers. It is estimated that 350,000 students leave school to become job seekers each year.

Violence in all its forms plagues the lives of South Africa's youth. Black youth were the shock troops of the anti-government campaigns of the mid 1980s and early 1990s. In addition to anti-government political violence, inter-party rivalries between the African National Congress and the Inkatha Freedom Party has claimed thousands of young lives over the past decade.

Criminal violence is reaching run-away proportions as the economy is unable to react quickly enough to the emerging demands for jobs, housing, and security. A recent estimate suggests between 40 and 50 murders per day countrywide, one of the highest murder rates in the world. Many of the victims are young people.

The Joint Center–NYDF Project seeks to put a provincial face on these national statistics. The gathering of data on and from out-of-school youth in each province will enable participants in the youth workshops, including government and political party representatives, to chart a course for youth development for their province.

Following these initial workshops, Joint Center and the NYDF staff will convene a series of focus groups to elicit from socially and economically "marginalized" South African youth their views on the future of young people in South Africa. The focus groups will be followed by a national workshop June 30 to July 3, where participants will develop youth policy proposals to present to officials of the government and political parties. Following this national workshop, an informative brochure and booklet on youth issues will be produced and distributed throughout South Africa. The last activity of this program phase will be a series of public hearings convened to inform elected officials of the urgency of youth development policy in South Africa. *This phase of the Joint Center's program in South Africa is funded for two years (1994-1996) through a grant from the United States Agency for International Development.*

Inner City Blues: Cities' Loss of Political Clout and Power

If ever there were "glory days" when America's cities wielded substantial power in statehouses, they are over now, says **MARGARET WEIR**, a senior fellow with the Brookings Institution. Weir contends that shifts in power have wrested from the cities whatever political clout once enabled them to forge powerful alliances with state legislators, and influence governors, who counted on big-city mayors to deliver votes on election day. Today, urban delegations in state legislatures lack the power they once had to deliver programs and services to the folks back home. Weir's findings will be published in a book titled *Race and Poverty in the City: Beyond Urban Isolation,* to be released next year.

The power formerly enjoyed by urban officeholders has shifted to elected officials from the suburbs, whose clarion call of "no new taxes" has drained resources that used to pour into the cities. In part, this rift follows class and race lines, as middle-class Americans of all stripes have been leaving the cities for outlying communities. Cities are becoming the domain of the poor and the powerless, many of whom are African American, Latino, and other people of color.

Once all-powerful political machines, like that controlled by the late **RICHARD J. DALEY** of Chicago during the 1960s, have crumbled as the demographics of urban centers have become more black and brown, and Weir believes this is not mere coincidence. But the demise of party machines can be traced to a second cause as well. National politics started to change during the 1980s so that instead of relying on the ability of political machines to mobilize voters, the financial contributions of political action committees has become much more important in winning elections, she says.

The cities loss of political clout and the concentration of poverty in their neighborhoods are a combination that will place them at a special disadvantage if Congress succeeds in converting federal welfare and social programs into block grants to the states. Most state governments have been unwilling to deal head-on with thorny social and economic problems, and many state legislators who represent suburban and rural constituencies are unsympathetic to urban concerns. The prevailing trend is to push responsibility for the policies and programs down to the lowest levels of government, consistent with an attitude that says, in effect, 'It's not a national problem, it's your problem. Deal with it.' But cities don't have the resources to 'deal with it.'

This approach of pushing responsibilities down to lower levels of government often exacerbates the problems that cities have, she explains. For example, when Michigan's Republican Governor **JOHN ENGLER** eliminated his state's General Assistance program in 1991, many single, unemployed adults lost the support of this program and the effect on Detroit was particularly harsh. Some who had been receiving the assistance did move off the welfare rolls and into jobs, or into the homes of family members. But many others became homeless, leaving Detroit with the responsibility to provide them food and shelter.

Weir suggests that the solution may lie in regional alliances among mayors and suburban leaders, both to share the financial burden of programs and to lobby state legislators and Congress on issues of mutual interest. She also argues that big-city mayors must be willing to make trade-offs, such as backing a suburban economic development project, in return for the guarantee that city residents would receive some of the jobs created. Weir concedes that such coalitions would be difficult to broker, because they would require each party to give up something. "But these small steps will be necessary," she explains, "because ultimately, cities and suburbs will have to approach their problems on a regional basis."

Weir warns that: "Poor communities and cities cannot untangle the problems of economic decline and social breakdown on their own. Unless states use their substantial power over land use, taxation, and education to discourage urban flight, spread the financial burden of poverty more fairly throughout the state, and prepare the next generation of urban workers for high-skill jobs, the fiscal and social burden of cities will only worsen."

JMB

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The NAACP on the Eve of the 21st Century

Rocked by Scandal and a Leadership Crisis, America's Most Visible Civil Rights Organization Prepares for New Challenges in Its Second Century

by Dianne M. Pinderhughes

> "The leadership was overly concerned with recognition from whites, a concern that helped prevent the organization from taking a confrontational stance. The program was overly oriented to a middle-class agenda and not nearly strong enough on the kinds of economic issues that meant most to working-class black people. [And] the organization [was] too centralized."

These views of the problems of the National Association for the Advancement of Colored People are not those of a present day critic, reflecting on the Association's recent woes. They were formed by Ella Baker during her years as the NAACP's assistant field secretary in 1941, and as National Director of Branches from 1943 to 1946, as summarized in Charles Payne's book, *I've Got the Light of Freedom*, published this year. Yet, Baker's assessment fits extraordinarily well with some of the issues that have called into question the viability and continued relevance of the NAACP as it faces its centennial in 2009.

During its first six decades, the NAACP pursued a program that focused on an anti-lynching campaign, school desegregation, and voting rights. Often working in coalition with other groups, the Association achieved many of its civil rights objectives. But from the 1970s and into this decade, the Association seemed to have stagnated and lost its vision.

In his short tenure as executive director of the NAACP, Ben Chavis attempted to revitalize the Association by reaching out to a broader constituency. He argued that class is a polarizing factor in the Association, because it is dominated by the middle-aged and 'upper class' sector of the black community which he saw as uninterested in the problems of gang members and low-income blacks. Chavis was criticized when he met in March 1994 with black nationalists and representatives from the Pan-African groups such as Angela Davis, Lenora Fulani, Cornell West, and Louis Farrakhan. At that meeting, they discussed how they might make common cause with the NAACP.

Projecting into the future, the NAACP can do a great deal if its new leadership, board Chair Myrlie Evers-Williams and the next executive director, when that person is selected, can reshape the Association to enable it to address the concerns of a broader segment of black America.

In the last 20 years, the NAACP's influence as a national pressure group has declined. It has been eclipsed by a growing number of black elected officials and their increasing political clout. And influence of the NAACP has been diluted by a welter of newer organizations that have joined the civil rights coalition. The organization's internal problems have also taken their toll. Just within the last 12 months, the Association has been rocked by scandal and an internal power struggle revolving around charges of sexual harassment and financial mismanagement against former executive director Ben Chavis, leading to his removal from office. There also was a very public and successful challenge against William Gibson by Myrlie Evers-Williams for the board chairmanship.

Few disagree that the Association is facing serious and complex problems, but options for restoring the organization to its former prominence vary widely. Some view the Association's problems as so monumental that they recommend starting over from scratch. Others see the organization's condition as serious, but manageable with direct attention. Even if the Association succeeds in addressing its philosophical dilemmas, it must overcome serious organizational and financial management difficulties.

Layers of Leadership

The Association is often described as hierarchical, bureaucratic, and slow to respond to new problems. It is. The size of the organization, its multiple levels of leadership, and the breadth and complexity of its mandate, make swift response to changing events difficult.

The NAACP's goals include keeping the public aware of the adverse effects of racial discrimination, and taking lawful action to secure its elimination while improving the political, educational, social, and economic status of minority groups. In recent years the organization has also developed several educational programs for young people, economic development projects, and a commitment to an environmental justice program.

But the Association's ability to meet its multifaceted mission is impeded by cumbersome organizational and leadership structures. It is governed by a 64-member board of directors, a national chairperson, an executive director and six vice presidents. National headquarters are in Baltimore. There is a legislative department in the Washington Bureau, a development office in New York City, and other offices around the country. The Association divides the nation into seven regions, each headed by a regional director, and regional representatives who serve on the national board. There are conferences of branches within

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each state, with about 1,700 local branches, and 400 college chapters and youth councils. Despite the Association's troubles, its membership has grown from 450,000 in the early 1980s to about 675,000 under Chavis. At the end of Rev. Benjamin Hooks's term as executive director, the association employed approximately 100 staff members, but recent financial problems have led to cuts and layoffs of over one-third of that number.

The Association's size and its many layers of organization frustrate efficient policy making. Policy is formulated by the national board and national office and at the NAACP's Annual Convention. Once adopted, a policy is passed down a chain of command that extends from the national office to state conferences, and then to local branches. Local branches are not expected to challenge policies handed down by the convention, board or national office.

On the other hand, the NAACP's bureaucratic structure also ensures a collective institutional memory, an understanding of what strategies have already been employed in a particular policy area, or in a state or city over a relatively long period of time. The organization's size and structure also mean that it operates in most locations regardless of the size of the black population. This provides opportunities for information flow: upward to the states and the regions and to the national office about problems, issues, and conflicts, as well as about innovative and successful efforts at the grassroots; across states and regions and through the national office and back to other states; or downward from the national office to the regions, states and local branches.

This complex bureaucratic structure means the NAACP has the potential to influence public policy formation as it occurs in most governmental bodies at any level—national, state, or local. These entities, which communicate with each other and with the national office, constitute a structure compatible with the 'federal government' and with the capacity to address problems of the NAACP's constituency at all levels. The Milwaukee branch, for example, recently won a major lawsuit with national implications in the area of housing discrimination.

The NAACP's coordinated policy focus and its interaction among public officials at each level constitutes a powerful political and policymaking resource for the African American community, if it maintains the focus and the will to do so.

Lawsuits and Furloughs

The Association is currently in considerable financial difficulty with a debt of close to $4 million reported in late 1994 on an annual budget of $11 million. Currently, the Association receives support from corporate contributors, its annual conventions, dues and donations from members, and foundation gifts. After revelations last year that Executive Director Chavis committed over $300,000 of NAACP funds to settle a lawsuit in which he was charged with the sexual harassment of a female employee, the Association's income from individual supporters and foundations fell off dramatically. Then-Chairman Gibson's possible involvement in Chavis's financial problems, as well as his resistance to reporting on the financial status of the Association, raised questions about his accountability and competence to handle the organization's affairs. By mid-November, the NAACP had insufficient funds to pay its staff and employees were furloughed for eight weeks.

The Ford Foundation withheld nearly $500,000 in funds until the leadership crisis was resolved. Other corporate and foundation donors, as well as individuals, also suspended financial support in response to the Chavis scandal and questions over Chairman Gibson's leadership.

The Association's financial problems have been developing for some time. In the early 1980s, when the Association could no longer afford to maintain its national offices in Manhattan, it was forced to move to Brooklyn. That proved a temporary solution, however, and the Association moved its national offices again in 1986 to Baltimore with help from the state of Maryland and that city's government.

Coalition and Public Policy

In addition to its organizational and financial problems, the NAACP faces a far more complex environment today than it did 50 or even 25 years ago. During the civil rights movement of the 1950s and 1960s, the NAACP and other organizations including the Anti-Defamation League of B'nai B'rith; the Brotherhood of Sleeping Car Porters; the black union founded by A. Philip Randolph; and other groups that did not necessarily have a civil rights agenda as their first priority, formed the Leadership Conference for Civil Rights to work for racial reform. The NAACP was founded by blacks and whites and evolved with the support of black communities over several decades and became one of only a few black-led national organizations focused on public policymaking.

In the "struggle" years of protest and demonstration in the 1960s, the focus of the movement was clearly racial discrimination. In more recent years, that focus has expanded to include race, gender, physical disability, age, and sexual preference. Some of these concerns are multiple jeopardies issues that have complicated what semed originally to have been a single focus. For example, sexual harassment proved an explosive issue for African American organizations, when Judge Clarence Thomas was nominated to the Supreme Court. Anita Hill's allegations about Thomas's inappropriate behavior when he chaired the Equal Employment Opportunity Commission, split African American organizations and diverted the focus of his Senate confirmation hearing away from civil rights concerns as traditionally defined.

Since the peak of the civil rights protest era, a large number of new, progressive racial/ethnic organizations modeled on the NAACP have been formed that focus on the rights of women, homosexuals, people with physical impairments, and non-black racial minorities. These

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The CBC Adapts to New House Rules

The Congressional Black Caucus Is Adjusting to Disabling Rules Imposed on It by the Republican Leadership of the U.S. House of Representatives

by David C. Ruffin

As the full impact of changes in the rules and budget cuts imposed by Republican leaders on the U.S. House of Representatives take effect, it is clear that the restructuring was intended to do more than save money. Specifically, eliminating budgets for House caucuses and reducing committee staffs have resulted in partially disarming the House Democrats, denying them many of their accustomed resources for supporting legislative activities. This has handicapped Democrats, now the minority party, as they attempt to address legislation contained in the GOP "Contract With America," most of which was passed in blitzkrieg fashion in the first 100 days of the 104th Congress.

In all, 28 House caucuses were stripped of their budgets, legislative research staffs, and offices on January 4, the first day of the new Congress—ostensibly to reduce the costs of congressional operations to the taxpayers. Among the groups affected are the Congressional Black Caucus (CBC), the Congressional Hispanic Caucus, the Caucus for Women's Issues, and the Democratic Study Group, a research organization whose daily analyses of floor legislation were relied upon by practically all House Democrats. At their weekly Wednesday afternoon meetings, CBC members used to share information, review legislative research, and develop collective strategies that each member could pursue in his or her committees.

In the case of the CBC and most other caucuses, eliminating budgets and staffs saved the public little or nothing. The CBC was supported by annual dues of $2,000 contributed by each House member from his or her office budget, which was used to hire staff and pay other operation costs for what was officially known as the CBC-Legislative Service Organization. Since the new GOP rules allow members of Congress to retain those funds in their office accounts, no savings were realized.

The real impact of the cuts was akin to that of a military assault, with GOP leaders leaving their Democratic adversaries disorganized and cut off from resources vital to their operations. Without funds, staff, a permanent meeting site, or even a telephone, the CBC and the other caucuses have been placed at a severe disadvantage. Instead of focusing on the "Contract with America," for example, the CBC was diverted during much of the first 100 days of the new Congress by questions centered on various reorganization alternatives.

One option was to reorganize the Caucus into a congressional membership organization (CMO), an informal group of House members without any required dues or separate staff. But the GOP's restrictive rules prohibit CMO members from using funds from their office budgets or even personal contributions to support the organization.

Another option was for the CBC to establish a nonprofit corporation by applying for a special waiver from House rules to solicit non-tax-deductible contributions. But a request for a similar waiver submitted by the Congressional Hispanic Caucus to the House Ethics Committee was denied.

These options were rejected by the CBC. The Caucus elected instead to reorganize informally, continuing to meet on Wednesday afternoons and borrowing aides from personal staffs to do legislative work. Despite its reduced resources, the CBC has responded to GOP attacks on affirmative action policy, their plans to cut aid to Africa, and their proposals to radically overhaul the nation's welfare system. In addition, as in the last two decades, the CBC submitted an alternative federal budget that proposes to reorder priorities for federal spending and taxes to balance the federal ledger by fiscal year 2002 while expanding funding for education and training.

On April 4, new rules were issued forbidding members of the House from soliciting funds for any organization they have founded, or which they control, or whose work is related to issues on the congressional agenda. These rules appear to be aimed largely at the Congressional Black Caucus Foundation, Inc. (CBCF), a nonpartisan 501 (c) (3) nonprofit organization independent of the CBC. The Foundation contends that the new rules do not apply to it because it was founded by black business leaders and is not controlled by members of Congress and the black congresspersons who serve on the CBCF board of directors represent a minority of the board membership. The Foundation operates as a research and educational institution that advocates no specific legislation, does no lobbying, and promotes no candidates.

Other rules changes imposed by the GOP leadership reduced the number of the House's standing committees and cut their funding by 30 percent, dramatically reducing staff support for Democratic committee members. The employee cuts caused many African American staffers to lose their jobs. The CBC members themselves lost chairmanships of three House committees and 17 subcommittees when the GOP took control of Congress. Furthermore, the establishment of six-year term limits on committee chairmanships diminishes the seniority accumulated by black House members. The Rules Committee is currently examining House procedures for a second round of rules revisions, possibly including the reshuffling of committee jurisdictions. ■

Mr. Ruffin is the editor of *FOCUS*.

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include the Mexican American Legal Defense and Educational Fund, the National Organization for Women, and the Disability Rights Education & Defense Fund to name a few. Most of these groups are part of an expanded civil rights coalition. But, although they share the same general civil rights philosophy, they each have their own agenda; the growth in the number of such organizations has diffused the influence of the NAACP.

In order to operate on a common front in the policy arena, the NAACP must negotiate with its coalition partners on which issues should have the highest priority and what strategy would be most effective.

Simultaneously, a number of conservative public interest law firms, foundations and other interest groups have been created like the Heritage Foundation, the Cato Institute, the Institute For Justice, the Free Congress Foundation, and the Washington Legal Foundation (which represented a Latino plaintiff's successful court challenge to the University of Maryland's Banneker Scholarship program for black students). The missions of many of these groups is to attack and dilute the policies of affirmative action, voting rights, and equal educational opportunity that the NAACP and its allies have struggled to put in place.

These conservative groups have waged a powerful campaign to roll back the gains in equality secured by the Civil Rights Act of 1964, the Voting Rights Act of 1965, Executive Order 11246, which codified federal affirmative action policy, and the other statutes and executive orders for which the NAACP and sister civil rights organizations had fought.

Through litigation, conservative groups have convinced the U.S. Supreme Court to hand down rulings that restrict the implementation of minority business set-aside programs by state and local governments as in the *City of Richmond* v. *J. A. Croson Co.* of 1989. The U.S. Supreme Court's *Adarand* v. *Pena* decision this month went even further to restrict federal set-asides and also places affirmative action programs at a higher level of scrutiny. And the high court's *Shaw* v. *Reno* ruling imperiled recently created majority-black congressional districts in Southern states, with restrictions requiring that they be "narrowly tailored to further a compelling government interest." Opposition to affirmative action has become increasingly strident since several Republican presidential candidates, led by Texas Sen. Phil Gramm, have made the abolition of affirmative action programs a campaign issue.

Success in the 21st Century

Now that Myrlie Evers-Williams has been elected chair of the NAACP board, she and the Association face a number of important choices. The organization must plan carefully for the short and long-term in all of these areas:

1. If the Association is to succeed in its second century, its policies must address the interests of a broader constituency. The policy arenas in which the NAACP has been active may be too numerous; the Association may have to select fewer on which to focus.
2. The next executive director should have a variety of strengths, including considerable experience in financial management, and be a person who can listen to a complex array of voices within the Association and within black America.
3. The Association must develop short and long range plans to implement a more manageable governance structure.
4. Evers-Williams and the board should begin with the executive director to map out plans for an endowment and revamp the organization's fundraising program. The national fundraising campaign should be coordinated with the fundraising campaigns of larger local chapters.
5. The jurisdiction and financial support of the Washington Bureau should be enhanced to expand the NAACP's influence on national policy.
6. The computing and communications capacity of the Association should be modernized with networked computers, and electronic mail.

The NAACP has an impressive legacy and must be credited as a major force in the struggle to secure major civil rights gains in the 1950s and 1960s. Despite its weaknesses and internal problems, the Association has the potential to once again stand as a preeminent advocate for civil rights. For that to happen, however, the organization has to be radically restructured and find a way to become financially solvent. But perhaps most important, the NAACP must recast itself so that its mission addresses the issues of the day and the concerns of a broader spectrum of black America. Whether the NAACP's new leadership is up to this task is what many are asking. ■

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