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FOCUS

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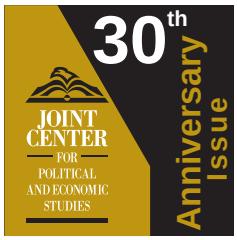

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30 Years of Reinvention

On May 1, the Joint Center celebrated its 30th anniversary in a super special way and with some very special friends and supporters. Ford Motor Company President and CEO Jacques Nasser chaired a fundraising dinner for us. We raised $1.2 million. New York Comptroller H. Carl McCall gave the audience a powerful speech that included a heads-up on his intention to run for governor of New York. An audience of over a thousand well-wishers enjoyed the repast, the speeches, the 30th anniversary program—and, of course, each other. It was truly an ecumenical event. Chairman Andrew Brimmer and I gave heartfelt thanks to everyone for everything they did to celebrate three decades in the life of the Joint Center.

For those who could not be with us on May 1, we are using the May issue of *FOCUS* to begin a retrospective look at the Joint Center's journey since 1970. During the rest of this year, we will include special articles, vignettes, and commentaries on the founding, evolution, and future of the nation's "premier black think tank."

In this special 30th anniversary edition of *FOCUS*, we lead with a feature titled, "Joint Center Originals," which takes a retrospective look at our journey as a think tank. While we began by providing technical assistance to newly elected black officials, the article notes how we have reinvented ourselves to address new challenges confronting our growing, diverse constituency, most recently, with respect to the digital divide in the information technology revolution. But the Joint Center has always remained grounded in addressing the long-term issues that African Americans have faced over the length of our experience in America—racial discrimination, access to quality education, economic equity, and political empowerment.

The other pieces in this issue look at the perennial nature of some of the issues we have covered in *FOCUS*. In "Continuing the Quest for Judicial Pluralism," federal judge Nathaniel Jones looks at how the federal judiciary can either advance racial equality or reverse its progress. The late, distinguished jurist A. Leon Higginbotham, Jr., addressed this issue in his letter to Justice Clarence Thomas on constitutional justice which was excerpted in our April 1992 edition. Jones expresses alarm at the dearth of African American participation in the federal judicial process. This is particularly significant at a time when the U.S. Senate has refused to act on several pending black presidential nominations for federal judgeships, an issue *FOCUS* has monitored for several years. The voice of John Sweeney, president of the AFL-CIO, is a new one in *FOCUS*, but his call for debt relief for developing countries is an old concern.

We continued our theme of updating issues we've covered in the past in TrendLetter. One piece in Political Report is a reprise of a 1990 article on the death penalty that shows a dramatic increase in the rates of executions over the decade with no improvement in racial justice in the prosecution of capital crimes. The other piece, "Stop Me Before I Run Again," looks at how many signatories of Rep. Newt Gingrich's "Contract With America," elected to the House of Representatives in 1994, have forgotten their passionate calls for congressional term limits and are seeking to extend their stays in Washington by running for reelection. The Economic Report refers to a prophetic warning issued in 1996 by a staff researcher that the welfare reform bill signed that year would leave many of the poor behind.

One thing we have learned over time, especially over the past 30 years, is that the more things change, the more they remain the same. Another is that we must be eternally vigilant and must stay on the case. ■

PRESIDENT

FOCUS
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EDITOR, FOCUS/David C. Ruffin
CONTRIBUTING EDITOR/Marc DeFrancis
PRODUCTION MANAGER/David Farquharson
TRENDLETTER RESEARCHER/Alfred Baltimore

Joint Center Originals

In Its 30 Years, the Joint Center Has Had to Reinvent Itself to Remain Relevant to a Diverse and Growing Constituency

by David C. Ruffin

The Joint Center was founded five years after passage of the Voting Rights Act of 1965 to equip newly elected black officials with the tools they needed to fulfill their responsibilities as mayors, judges, and council and school board members—mostly in the South. As a group, these black elected official (BEOs) grew in number and influence and formed the nucleus of the Joint Center's first constituency.

In time, that constituency, now numbering nearly 9,000 BEOs, has been broadened to include academics, civil rights leaders, corporate and foundation executives, heads of public interest organizations, labor officials, and the clergy of all races. Accommodating such a diverse aggregation of stakeholders has required the Joint Center to reinvent itself as a full-blown national think tank. Along the way, the portfolio of issues addressed by the Center was enlarged to encompass economic empowerment, social policy, fostering democracy and development abroad, and access to healthcare. Its original focus of advancing black political participation remains a core area of concern today. As we observe our 30th anniversary, the Joint Center stands committed to: "improving the socioeconomic status of black Americans and other minorities; expanding their effective participation in the political and public policy arenas; and promoting communications and relationships across racial and ethnic lines to strengthen the nation's pluralistic society."

The Joint Center has provided a platform not only to support the policy research and analysis of our own staff, but also to support a stream of visiting scholars and senior military fellows. Responding to black concerns raised during the three decades of our existence, we have taken on issues such as full employment, banks redlining urban communities, the plight of Vietnam veterans, immigration policy, and pay equity. Some issues are recurring—redistricting, a secure social safety net, a full census count, black underrepresentation on the federal bench. But our research is useless unless we disseminate it to our extended family as well as to the vast policy marketplace. This is done through forums, through FOCUS and our other publications, and over the Internet.

When we went online in 1997, our website, www.jointcenter.org, became our most effective delivery system. Today it includes our Devolution page, which tracks the transfer of resources and the administration of domestic programs from the federal government to the state and local levels. Our DataBank offers immediate access to prepared fact sheets on racial and ethnic population data on health, poverty, Social Security, voting, income and wealth, education, welfare, crime, population estimates and projections, housing, and employment and earnings. One can learn what Joint Center books, reports, and other publications are available on a range of social, economic, political, and international issues of particular concern to African Americans. The site also contains back issues of *FOCUS* from 1997.

At the beginning of each presidential year, we hold our quadrennial National Policy Institute. During this three-day conference, we are able to present the issues by which to measure the candidates for political office. The Institute was particularly vital this year, as voters prepare to elect a new president, 11 governors, 33 U.S. senators, and all the members of the House of Representatives. Cosponsored by the seven national organizations of black public officials, this year's Eighth National Policy Institute, held in Washington, D.C., in January, drew 400 participants. The workshops and plenary sessions at the Institute addressed such issues as the Census undercount, political participation, education, information technology, and discrimination.

Joint Center Originals

Thirty years of research has generated a number of original products unique to the Joint Center. Perhaps the most famous of them is our *Roster of Black Elected Officials* (BEOs), the world's only compilation of all African Americans elected to various elected posts across the nation. The Roster's inaugural volume contained 1,469 BEOs, but today there are 8,868, a more than six-fold increase. More than a headcount, the Roster has been a unique resource to scholars, libraries, the media, and political analysts. From 1970 to 1993 it was produced in book form. Today it's a vast computerized database which makes possible customized compilations.

Joint Center opinion polls, begun in 1984, are relied upon as a unique source of black opinion on major policy issues as well as approval ratings of potential presidential candidates and other national political figures. Few regular national surveys include a large sample of African Americans, as ours does, and a parallel sample of the general population. The surveys often reveal things about the black polity that are not commonly known. Certainly, it is not news that African Americans overwhelmingly identify themselves as Democrats (81%), while only 9 percent identify themselves as Republicans and 6 percent as Independents. But it is not so well known that blacks are almost evenly spread as liberals (32%), moderates (32%), and conservatives (29%).

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Mr. Ruffin is the editor of FOCUS.

Originals

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Joint Center surveys have found that African Americans consistently see the economy, unemployment, crime, and education as top concerns. The surveys have demonstrated agreement between African Americans and the rest of the population in the proportion of people who believe that a woman has a right to reproductive choice, that firearms should be regulated, and that affirmative action programs should be maintained as they are or revised. The surveys also show areas of disagreement. Slightly less than half of blacks today support the death penalty, compared with 72 percent of the general population. And most blacks trust the federal government more than states to guarantee social safety net programs, while the reverse is true for the general population.

In 1993, the Joint Center established an office in South Africa after the end of apartheid. As part of a long-term, ongoing democratization program, we initially provided technical assistance and support to newly formed political parties in anticipation of that country's first historic nonracial national elections in 1994. More recently, we have worked to strengthen grassroots participation in governance among South African citizens through community-based organizations in black townships and rural areas in the Northern Province, Eastern Cape Province, and the Free State.

One might say that the Joint Center wrote the book on black philanthropy. As a staff scholar in the 1980s, Emmett Carson found that African Americans are as generous as whites in their charitable giving. Substantial data supporting this finding appeared in *The Charitable Appeals Fact Book: How Black and White Americans Respond to Different Types of Fund-raising Efforts*, published in 1989. His subsequent volume, *A Hand Up: Black Philanthropy and Self-Help in America*, in 1992, illustrated the historical evolution of this charitable behavior, showing how philanthropy and community support are long-held traditions among African Americans dating back to slavery. Taken together, Carson's two books went far toward overturning the common misconception that African Americans don't help their own.

Research has also focused on African Americans in the military, with emphasis on the recruitment and promotion of blacks among the officer corps, beginning in the 1980s. Some of our senior military fellows have performed groundbreaking research in this area. In 1991, Colonel Michael Shane presaged the negative impact that post Cold War military downsizing would have on black officer ranks in all services. More recently, Colonel Hector Topete, senior military fellow from 1998 to 1999, observed that while Hispanics are America's fastest growing minority, they are dramatically underrepresented in the army's officer corps. In his report, *Underrepresentation of Hispanic American Officers in the Army's Officer Corps: A Study of an Inverse Dynamic*, Topete laid out concrete proposals for addressing the problem.

From 1989 to 1991, the Joint Center's International Poverty Project examined first world poverty. This project, coordinated by social scientist Katherine McFate, was a comparative study of government responses to poverty among industrial democracies in Europe and North America, focusing on the United States, the United Kingdom, Canada, France, West Germany, the Netherlands, and Sweden. The study found that while the United States exceeded Europe in economic expansion during the 1980s, it lagged behind nations on the other side of the Atlantic in providing safety-net programs for low-income citizens who bore the brunt of that decade's economic change. In 1991, more than 30 international scholars from both continents who contributed to the study participated in a major Joint Center forum on this issue. At the conclusion of the project, McFate's work and that of the other scholars led to a major volume, which McFate coedited with William Julius Wilson, entitled *Poverty, Inequality and the Future of Social Policy: Western States in the New World Order.*

The Future

Some things in the future may change only gradually. We will continue to study the disparities between racial minorities and whites based on education and income. And equity in access to healthcare is still a long way off. Sadly, we can expect racism to take on new forms rather than going away altogether. This is an issue that we have committed a great deal of resources to address, and in the near future we will launch the Network of Alliances Bridging Race and Ethnicity (NABRE).

One major challenge will be to continue to identify the questions and provide some of the answers as our society is reordered by rapid changes in science and technology. Economic, political, and social relationships of all kinds are being shaped and reshaped by digital technology. The Internet has decentralized the workplace making it possible for thousands to telecommute from their homes. This year, we may have seen a harbinger of cyberdemocracy in the Arizona presidential primary, where residents were given the option of voting online.

We are living in an age in which computers and the Internet are driving a booming economy and generating millions of jobs. This revolution in information technology has become a major force in our society. And the Joint Center is examining its impact on black America. Our forum "Resolving the Digital Divide: Information, Access, and Opportunity," held last October, illustrated how low-income Americans and people of color are in danger of being locked out of this revolution because of the digital divide between technological haves and have-nots. But all is not bleak. At our Eighth National Policy Institute in January, we heard from three black digital entrepreneurs and innovators who are at the cutting edge of cyber technology. We are not only researching the technological revolution, we have embraced it as a mechanism for our own reinvention. Last year, using the tools of the future, we inaugurated the Black Leadership Information Exchange, our first Internet-based interactive membership network of policy influentials. And there's more to come. ■

For more information on this and related topics, click on this icon on our website.

Continuing the Quest for Judicial Pluralism

Racial Diversity on Federal Appeals Courts Matters Because of Their Influence in Shaping Laws and Policies

Nathaniel R. Jones

Federal Appeals Court Judge A. Leon Higginbotham, Jr., memorialized in the January 1999 issue of FOCUS, *was a distinguished federal jurist, legal scholar, and historian, as well as a tireless advocate for civil rights. Known as "the people's judge," Higginbotham, who died on December 14, 1998, believed that justice should not be the private preserve of the well-off and those with influence, but that it should be extended equally to the poor, the voiceless, the powerless, and the downtrodden.*

A year after his death, Harvard Law School inaugurated the Judge A. Leon Higginbotham, Jr. Memorial Lecture series. The first lecture was delivered on December 1, 1999, by Sixth Circuit Federal Court of Appeals Judge Nathaniel R. Jones. Jones takes up Higginbotham's call for pluralism in the federal judiciary to ensure that the formulation of judicial decisions includes the experience of jurists with diverse backgrounds and perspectives, especially on courts of appeals. Judge Jones' remarks are particularly significant in light of foot dragging by the Republican-controlled Senate in confirming President Clinton's black nominees to the federal bench. The following excerpt marks the first time Judge Jones' lecture has been published. The full text of his lecture will appear in the Harvard Journal for African American Public Policy *in the fall.*

Our courts must play an essential role in strengthening the means of enforcing the Constitution's guarantees against discrimination. The brilliant scholar and jurist A. Leon Higginbotham dedicated himself to defending that role. With his uncanny ability to foresee and draw attention to looming developments unappreciated by the general populace, he wrote in *The New York Times* in 1992:

> Suppose someone wanted to steal back past achievements, rein in present gains, and cut off future expectations among African Americans about participation in the judicial process. That person would have found it difficult to devise a better plan than nominating Clarence Thomas to the Supreme Court while decreasing the number of African American judges on the federal bench.

Judge Higginbotham rejected this form of tradeoff because it struck him as a form of "rope-a-dope" that was certain to derail efforts to protect the constitutional rights of historic victims of discrimination.

Higginbotham was well aware of the dramatic decline in the number of African Americans nominated for federal judgeships during the administrations of Presidents Ronald Reagan and George Bush as compared with those appointed by President Jimmy Carter. Early in the Clinton administration, he alerted others to this problem, encouraging them to pay closer attention to the strategies being employed by the Senate majority to slow down the confirmation of judicial nominees of color. The shocking rejection of Missouri Supreme Court Justice Ronnie White for a district court judgeship in a straight party-line vote is but the most recent example of what Higginbotham warned about in 1993.

When Carter became president in 1977, there were only two African American judges on federal courts of appeals. In four years in office, he appointed nine, including the first African American woman, Amalya L. Kearse. Unfortunately, Carter's move in the direction of diversifying the federal court became the target of the Reagan administration. It was not a stealth policy. Stephen J. Markman, Reagan's assistant attorney general for the Office of Legal Policy, laid out the new policy's purpose with absolute candor. The objective, Markman said, was to fill the federal courts with ideologically compatible judges who would exercise "judicial restraint."

By the end of Reagan's second term, the *Columbia Law Review* had published an article noting that Reagan's appointees to the various courts of appeals represented "the most consistent ideological or policy-orientation screening of judicial candidates since the first term of Franklin D. Roosevelt." The justifying language Reagan used then was the same as that being used by Congress today: eliminating or blocking "judicial activism," rejecting judges who "legislate from the bench." These were among the same sins ascribed to judges who had struggled to eliminate the "separate-but-equal" vestiges of *Plessy* v. *Ferguson* outlawed in 1954 by the Supreme Court in *Brown* v. *Board of Education.*

The numbers alone tell the story. After his initial appointment to the Third Circuit Court of Appeals in 1949, Judge William Hastie remained the sole African American federal appeals court judge until 1961, when President John F. Kennedy appointed Thurgood Marshall to the Second Circuit and Wade H. McCree and James Parson as district judges in Michigan and Illinois.

President Lyndon B. Johnson's historic appointment of Marshall to the U.S. Supreme Court was like a shot heard around the world. Johnson and then Richard Nixon made a number of other African American judicial appointments, but it was not until the Carter administration that the most significant breakthrough occurred, with 37 of Carter's 258 appointed judges being African American. Progress stalled during the Reagan and Bush years, when only 19 African American judges were appointed over their three terms, out

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Judge Jones sits on the Federal Sixth Circuit Court of Appeals.

Judicial Pluralism

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of a total of 579 appointments. President Clinton has made up considerable lost ground with more than 55 appointments over the past seven and a half years. But the recent behavior of Congress has been troubling. Not only did the Senate take an average of 60 days longer to accept or reject black judicial nominees than it did white ones in the 105th Congress (1997-98), but the rejection rate of black nominees (35 percent) was more than twice as high as that for white nominees (14 percent). It is clear now that, by intentional senatorial action, the brakes have been applied to dramatically slow down the approval of African Americans nominated for courts of appeals and district court seats.

Judicial Pluralism

Judge Higginbotham pushed hard for racial and ethnic diversity on the judicial bench. To him, the presence of what he called "judicial pluralism," particularly on the courts of appeals, "made the federal judiciary far stronger than it otherwise would have been." He wrote further, "I do not want to be misunderstood. Pluralism does not mean that only a judge of the same race as a litigant will be able to adjudicate the case fairly. Rather, by creating a plural court, we make sure judges will reflect a broad perspective."

A racially representative federal bench is vital in our current system of justice for other reasons as well. It is worthwhile to look closely at what federal judges actually do on the bench. The issues that find their way to the courts and the controversies otherwise generated between racial, ethnic, economic, and social groups, all require that these judges have the broadest possible range of life experiences.

With court dockets increasingly crowded, judges are disposing of many civil cases in a summary manner without trial. These summary dispositions require judges to make decisions about whether there are genuine issues that are material to the claims and whether justifications for the challenged conduct are valid or not. In cases of alleged sexual harassment or racial hostility in the workplace, or those involving housing discrimination or prisoners' rights or other civil rights matters, the judges' perceptions and state of mind will have an important influence on their decisions. In fact, in such circumstances the judges' range of societal experiences bears as much weight, if not more, than their legal skill. On a broad scale, only a diverse set of judges with a diverse set of experiences can succeed fairly in this work.

Courts of appeals play a large role in shaping and altering our legal and political system. One reason why such a precise ideological micrometer is being used to consider nominees to the federal bench is that political leaders recognize this corrective and policy-reforming power. That role has come to be derisively called "legislating from the bench."

Yet by interpreting a law in one way or another, or by assessing a given law or set of facts through the lens of a specific constitutional ideology, one appellate panel can have as much impact as the Supreme Court or, indeed, as the original legislators. Given this reality, it can be said that, from both the left and the right, judges do indeed "legislate from the bench," whether they recognize it or not. And more often than not, these courts' dispositions are the last word on a particular matter.

The vast majority of cases reviewed in the courts of appeals do not go before the Supreme Court. In fact, the federal courts of appeals are the final stop for over 98 percent of the federal cases filed. Thus, in those cases where a petition filed in the U.S. Supreme Court for review is denied, that denial effectively cements the result of that case into place both within the respective circuit and, depending upon the issue and the case, perhaps nationwide. Even when the court does grant a review, on many occasions it will find convincing the appellate court's resolution of an issue and essentially affirm its reasoning. In these instances, too, the appellate court serves as the instigator of a new interpretation of the law or of a new policy as wide and deep in scope as one that might emanate from Congress itself.

Violating Basic Constitutional Requirements

The following example shows just how strong a policymaking role the appellate courts play in our country and underscores my deeper point of how important it is that the appellate bench be racially representative. In its *Hopwood* v. *Texas* decision, the Fifth Circuit struck down the admissions program of the University of Texas law school, which included a racial preference element. Reversing what had been widely regarded as "settled precedent," the Fifth Circuit in *Hopwood* unilaterally declared that Justice Powell's opinion in the 1978 *Regents of the University of California* v. *Bakke* case was not "binding precedent."

In the *Bakke* decision, the Supreme Court upheld affirmative action in college admissions. It confirmed that race may be considered in admissions so long as quotas were not used. But the Fifth Circuit in *Hopwood* declared that "the purpose of achieving a diverse student body is not a compelling interest under the Fourteenth Amendment." This was certainly not an instance of a court applying the law dictated to it by the Supreme Court, by Congress, or by the Constitution. As the dissenting justices in the Fifth Circuit's ruling stated, the *Hopwood* decision "goes out of its way to break ground that the Supreme Court itself has been careful to avoid and purports to overrule a Supreme Court decision."

Not only was the decision one of judicial law-making, but it is a decision by a single circuit panel that has profoundly changed the legal status of affirmative action in education nationwide. Since the Supreme Court's denial of an appeal on this decision, many district courts have cited *Hopwood* as authority that diversity is no longer a proper justification for *any* affirmative action program. Even circuit courts that have not agreed with the *Hopwood* holding on the diversity issue have followed the case's more general trend in striking down racial preferences in education in strong terms.

Continued on back cover

A Call for Debt Relief

Labor Leader's Call Echoes a September 1999 FOCUS *Article Profiling Legislation on U.S.-African Trade*

John Sweeney

Last year, in a September 1999 FOCUS *article entitled, "A Historic Trade Pact With Africa," Joint Center vice president for international affairs Carole Henderson Tyson wrote about the African Growth and Opportunity Act (AGOA), passed this month by Congress. AGOA will promote growth and democracy through increased trade and investment from the United States. One of the measure's main goals is also to provide deep reductions for Africa's debt by addressing the U.S. debt portfolio and encouraging other countries to do the same.*

This year, on April 9, AFL-CIO President John Sweeney addressed the issue of developing countries' crushing debt, speaking at the Jubilee 2000 National Mobilization in Washington, DC. At the event, he called upon the World Bank, the International Monetary Fund (IMF), and the world's industrialized nations to end the debt that is debilitating the world's poorer nations. The Jubilee rally was a precursor to the Mobilization for Global Justice protests held outside the World Bank and IMF meetings in Washington a week later. Following is Sweeney's April 9 speech on debt relief:

It is my privilege to come before you today and bring a message from the 40 million men, women, and children living in union households in the United States. Our message is clear: today's unions and the working families of America want debt relief, and we want debt relief now.

It is also my privilege to bring you news from the World Congress of the International Confederation of Free Trade Unions, which met last week in Durban, South Africa. The ICFTU member unions from 145 countries voted unanimously to call for a far-reaching solution to the crushing burden of debt borne by developing countries. The news from Durban is clear: the ICFTU, and indeed the working families of the world, demand debt relief now.

In Mozambique, one out of four children dies before reaching the age of five because of infectious diseases that can be controlled. But the government of Mozambique is spending twice as much on servicing international debt as it spends on health and education combined. In Ethiopia, more than 100,000 children die every year from diarrhea that can be treated and prevented. But the government of Ethiopia is spending four times as much on debt payments as on its public budget for health care. And in Uganda, where one in five children also dies from a treatable, preventable disease before age five, the government is spending 17 dollars per person on repaying its debt while spending only three dollars per person on health care.

If nothing else, the debt burden of developing countries is killing hundreds of thousands of children every year, and that's why we can't wait until next year and that's why we are united in our mission and committed to the goal of debt relief. Sadly, the crushing burden of worldwide debt is doing even more than killing children, it is also killing the hopes and dreams of working families from Managua to Milwaukee and from Karachi to Kansas City.

High debt levels force developing countries to lower labor standards and wages in order to attract corporate investment. That means American workers must compete for jobs with workers in other countries who are making 10 cents an hour—it pits worker against worker and nation against nation in a race to the bottom, and it's a race we must stop.

I believe if we work hard enough and march long enough and press our elected officials hard enough, we can persuade the United States Government and our Congress to support worldwide debt relief for countries that are committed to democratic reforms and core workers' rights. The amount of money it would cost this country is an incredibly small portion of our budget, yet the amount of help and leadership it would provide would be unbelievably large.

But debt relief alone won't make the global economy work for working families. Rich countries, especially the United States, must provide more funds to poor countries for economic development, and we must make sure the money goes to creating more jobs, providing better health care, raising more food, and building more schools, and not to building more palaces or buying more tanks. Technologically advanced countries, especially the United States, must provide more assistance to developing nations, while insisting that the governments that receive our assistance respect basic human rights and workers' rights in their fields and factories.

And progressive, politically powerful countries—most especially the United States—must insist that international financial institutions like the International Monetary Fund and the World Bank stop pressuring countries to reform their economies in the wrong direction and instead reform themselves. As I told the delegates to the ICFTU Congress in Durban, we must demand a world economy that allows nations to follow different paths to development, even as it enforces standards and core values common to us all.

Together, people of faith and conscience can rescue the world economy from those who know the price of everything and the value of nothing. Together, we can build a world where children stretch their minds in classrooms, instead of straining their backs in factories, a world where every man and woman can live and work in dignity, where markets lift us up instead of driving us down. That world begins with debt relief and debt relief now. ■

Mr. Sweeney is the president of the AFL-CIO.

Judicial Pluralism

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Legal scholars have agreed with the courts that by "declin[ing] to review *Hopwood* with hardly a blink," the Supreme Court effectively permitted the Fifth Circuit to overturn *Bakke*. As a consequence, *Hopwood* is not only playing a major role in the current public dialogue on affirmative action in education, but the decision is also having a tangible impact on admissions policies of institutions of higher education, as well as on ongoing litigation in Michigan and Washington State. As one observer stated, after *Hopwood*, "uncertainty is the order of the day." Another has predicted that "at a minimum it will force every college, every medical school, every law school . . . to review their procedures" for admission.

Indeed they have. In the wake of *Hopwood*, the attorneys general of Colorado and Georgia have urged public colleges in their states to dismantle "racial preferences." The decision has sparked institutions of higher education to rethink how they can better defend affirmative action programs from constitutional attack. All such discussions ultimately have to take account of Judge Higginbotham's legal and historical scholarship on race to avoid doing violence to basic constitutional requirements. One solution that has been pursued both in Texas and other states has been to accept a blanket percentage of high school applicants who graduate above a certain rank in their classes, abandoning any semblance that admissions is an individualized process, and perhaps introducing other potentially negative effects that are not immediately clear.

Other examples abound of circuit court cases that have had profound impact on national policy. In 1997, the Ninth Circuit upheld California's Proposition 209, which amended the state constitution to bar public entities from granting preferential treatment on the basis of race or gender in *Coalition for Economic Equity* v. *Wilson*. Once again, the Supreme Court refused to hear an appeal on the decision, cementing the Ninth Circuit's decision among the panoply of cases standing in the way of racial preferences. Other states, among them Washington, Alabama, Arizona, New York, Massachusetts, and Missouri, are now following California's lead by proposing similar measures.

This powerful role of the appellate bench in shaping policy nationwide should give lawmakers and the legal community pause when looking at the skewed racial make-up of the courts. Twenty years ago, by his groundbreaking work *Democracy and Distrust*, John Ely wisely emphasized the vital role of the judiciary in assuring representative democracy by reviewing the actions of the legislative branch. As Ely pointed out, this is particularly important in those instances where majority and minority interests potentially clash—when we have good reason to "distrust" our democracy because the majority interests will trump those of the minority.

In the same way, to the extent that courts of appeals act as policymakers in our system of government, we should be equally concerned that they are broadly representative of diverse viewpoints, backgrounds, and interests. To borrow from the title of Ely's book, when we have a racially underrepresentative federal bench shaping laws and policies that impact differently on majority and minority interests, we have greater reason to "distrust" that our federal court system is achieving just results for all its citizens. ■

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Joint Center for Political
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TRENDLETTER

POLITICAL REPORT

by David C. Ruffin

Since FOCUS *was founded 28 years ago, it has covered a range of policy issues of concern to our growing national leadership audience. In many instances—school vouchers, managed care, court challenges to congressional district boundaries—the outcome of an issue affects African Americans differently than other segments of the population. The analysis and perspective provided by* FOCUS *coverage reflect the special needs of our readers. Several of the topics we have written about over the years are as salient and controversial today as when we first covered them. This edition of TrendLetter updates our past coverage of the death penalty, congressional term limits, and welfare reform.*

As Executions Increase, So Do Doubts About the Death Penalty

In 1972, the U.S. Supreme Court banned all executions, but it reinstated them in 1976. The October 1990 issue of *FOCUS* ran "The Color of Capital Punishment," which profiled the death penalty in the United States. By 1990, 36 states had adopted capital punishment. Our 1990 *FOCUS* article looked at how many inmates were on death row then and provided a racial breakdown of how many were executed.

From 1976 to 1990, 143 people were executed in the United States. African Americans were executed at a rate that is *three times* their proportion of the population. Fifty-six or 39 percent of the 143 inmates put to death were black. Forty percent of the 2,393 inmates on the death rows of various states were black, compared with 50 percent whites, 7 percent Latinos, and 2 percent Asians and Native Americans. What many of the people on death row had in common was that they were poor and usually had to rely on inexperienced court-appointed lawyers who, more often than not, were unprepared to present a viable defense.

Since that article was written, two more states have adopted the death penalty and the total number of executions reached 631 (as of May 10, 2000) according to the Death Penalty Information Center. African Americans were again disproportionately represented in that number at 223, though the percentage of blacks put to death dropped slightly to 35 percent. There has always been a large disparity between the race of victims of capital crimes generally and the race of the victims of those who are executed. The vast majority of convictions in capital crimes, 83 percent, have involved white victims even though whites make up only about 50 percent of all murder victims.

In 1990, Texas, with a total of 37, was the clear leader in the number of executions. Today, Texas maintains its number-one status, having carried out a third (213) of all executions since 1976. Virginia is currently in second place with 76 executions. Florida is third with 46. By far, most executions (510) have taken place in the South. By contrast, only three executions have taken place in northeastern states. The number of death row inmates has grown to 3,651 (whites, 47%; African Americans, 43%; Latinos, 8%; others 2%).

One of the main points of opposition to the death penalty is that executions are irreversible. If an innocent person is put to death, there is no chance to correct that error. This is a major problem because, since 1973, more than 80 people on death row were found innocent and released. Some of the factors contributing to wrongful capital convictions are the race of the accused, the race of the victim, inexperienced defense attorneys, pressure on the police to solve a high profile crime, reliance on coerced confessions, the withholding of exculpatory evidence from the defense, and other prosecutorial misconduct.

The work of groups like the Innocence Project, and of teams of attorneys and investigative journalists, has resulted in freeing dozens of men and women who have been wrongfully convicted of capital crimes. They have reopened cases by introducing DNA tests and other scientific evidence often neglected by defense attorneys in initial trials. The possibility of executing an innocent person became a major concern to Republican Illinois governor George Ryan

when he learned this year that 13 death row inmates had been found to be innocent, one more than the total the state had executed since 1976. On January 31, 2000, Ryan, who supports the death penalty, imposed a moratorium on all executions in his state until a special commission studies capital punishment and submits its recommendations to him. He said, "I cannot support a system, which, in its administration, has proven so fraught with error and has come so close to the ultimate nightmare, the state's taking of an innocent life."

"Stop Me Before I Run Again"

The January 1995 issue of *FOCUS* carried an article, "Term Limits Are Not the Answer," by Becky Cain, then president of the League of Women Voters of the United States. In her article, briefly excerpted below, Cain questioned the logic of proposed congressional term limits, which sought to eliminate experienced legislators from government. She noted that experience is highly valued among teachers, brain surgeons, carpenters, airline pilots and, in fact, nearly all professions. Another concern about term limits was that they threatened to wipe out black political advancement in Congress by sweeping from office black legislators who had accumulated seniority and risen to power in the House of Representatives. Cain argued:

"Term limits are a smokescreen, a simplistic answer to hard questions about our government that demand equally hard choices. ...The truth is that there already are term limits in this country. They are called elections. If citizens don't like the job their elected representatives in Washington are doing, they can support other candidates and vote them out... Term limits deny citizens the right to choose those whom they think best represent their interests...and would result in increased reliance on congressional staff and unelected insiders... Also gaining in influence under term limits would be lobbyists and special interest groups."

At the time Cain's article appeared in *FOCUS*, the Republican members of the U.S. House of Representatives, whose party had gained control of that body for the first time in 40 years, had begun the 104th Congress by legislating the "Contract With America." This second conservative revolution in the last two decades (after the one led by Ronald Reagan's presidential administration in the 1980s) was bolstered by 73 Republican House freshmen who ran on the Contract in the November 1994 election. One of the 10 points of the Contract was congressional term limits.

Supported then almost exclusively by Republicans and conservative groups, term limits were regarded by critics as more an effort to shift political fortunes than as a genuine proposal for reform. But proponents insisted that term limits were a moral imperative, necessary to wrest power from the Washington establishment and return it to the people. The following statement from a May 22, 1995, House floor speech by Rep. Porter Goss (R-Fla.) was typical: "We have seen the arrogance of power here resulting from a system where longevity, not merit, determines clout. Let's return to the idea of citizen legislators who go to Washington to serve and then go back home to live among the people that they have worked for."

Early in 1995, several bills were forwarded to limit congressional terms to either six or 12 years. A Republican-sponsored constitutional amendment (HJ Res 73) was introduced to limit senators to two terms and House members to six years, with service in both houses not to exceed twelve years. The measure, dubbed by one opponent as the "stop me before I run again" amendment, failed to receive the required two-thirds majority by a vote of 227 to 204. Among those voting against it in a March 29, 1995, roll call were 40 Republicans, mainly Capitol Hill veterans and committee chairs like Henry Hyde of Illinois (Judiciary), Bob Livingston of Louisiana (Appropriations), and Bill Archer of Texas (Ways and Means). Currently, 18 states have enacted term limits for their state legislators.

With majority status, the GOP's enthusiasm for congressional term limits has waned. In fact, shortly after the 1994 election, Rep. Dick Armey (R-Tex.), who later became House majority leader, is reported to have said that term limits were probably no longer needed. And with its narrow six-seat lead over the Democrats in this Congress, this year House Republican leaders have pressured legislators on their side of the aisle to run for reelection, despite earlier pledges to limit their terms voluntarily.

Nevertheless, at the end of this year, several of the Republican legislators who were freshmen in the 104th Congress—Marshall Sanford (S.C.), Matt Salmon (Ariz.), Thomas Coburn (Okla.), and Jack Metcalf (Wash.)—will be terminating their service in the House after three terms to honor their commitment to self-imposed term limits. But 104th Congress freshmen George Nethercutt (R-Wash.), Phil English (R-Pa.), and Lindsey Graham (R-SC) have opted to run for reelection despite strident promises earlier to make their stays in Congress short. More than 40 other members of the 104th Congress freshman class are also running for reelection this year.

And what of Rep. Porter Goss of Florida, who in 1995 decried the "arrogance of power" and exhorted "citizen legislators" to serve in Washington and "then go back home?" Well, this is his 12th year in Congress and he's running for a seventh term. ■

ECONOMIC REPORT

Time Limits and Working Welfare Families

by George Cave

The October 1996 issue of FOCUS *ran "Shredding the Safety Net" by Katherine McFate, then associate director of social policy at the Joint Center. The article issued an alert that the welfare reform bill enacted that year represented a dramatic shift in a core social program that might result in leaving millions of poor families worse off. McFate warned that the new law, which devolved virtually all control for welfare programs to the states, emphasized reducing welfare caseloads by stressing work and imposing an arbitrary time limit for how long families could receive benefits. Many advocates for children and the poor criticized President Clinton for signing the bill, especially since he opposed similar measures previously. As Joint Center economist George Cave writes in the article below, the reform bill's time limit provision may be a ticking time bomb ready to explode in the faces of the working poor.*

On August 22, 1996, the nation's primary welfare system, Aid to Families with Dependent Children (AFDC), was replaced with Temporary Assistance to Needy Families (TANF) as a reform measure. The goals of TANF included moving recipients into work and turning welfare into a program of temporary assistance. The new measure gave state governments substantial latitude to determine who would be eligible for welfare, how long they would be eligible, and under what conditions. As of March 1999 there were about 7.3 million people (mostly children under age 18) in 2.8 million families receiving welfare under the new system.

The law permits some beneficiaries who have found work to continue receiving TANF payments as an income supplement. According to the latest TANF Report to Congress, about a third of households receiving AFDC or TANF benefits during the previous year had an employed adult during March 1998, and about 23 percent of families receiving TANF or AFDC in the typical month during fiscal 1998 had an employed adult. Thus the number of families combining work and welfare is substantial.

However, in most states every dollar of reported earnings triggers a decline in the family's monthly benefit check. This provision of welfare law, known as "earnings benefit reduction," has kept the incomes of many families so low that they remain below the poverty line. The State Policy Documentation Project (SPDP), a joint project of the Center on Budget and Policy Priorities and the Center for Law and Social Policy, tracks state policy choices on TANF programs and Medicaid in the 50 states and the District of Columbia. According to SPDP data, in some states the monthly welfare benefit level is so low that a minimum-wage job quickly reduces the monthly benefit to zero. For example, earning $205 or more (the earnings eligibility limit in a month) leads to ineligibility for welfare in Alabama.

In most places, working thirty hours a week at the federal minimum wage ($5.15 an hour) still leaves a welfare recipient eligible, albeit for a reduced monthly benefit. Thirty hours per week for four weeks at the minimum wage comes to $618. As of January 2000, a single-parent family of three could have earnings of more than $618 a month for more than a year and still qualify for welfare in 37 states and the District of Columbia.

Unfortunately, the vast majority of states that allow working poor families to combine supplemental welfare income with earnings ultimately will be forced to take the supplement away because of another welfare policy: a time limit on all benefits. Time limits vary from state to state, but none exceeds five years. Before the 1996 law was enacted, the vast majority of welfare families, in principle, could receive benefits indefinitely, as long as they fell within state and federal eligibility requirements. The new law limits eligibility to receive benefits to a maximum of five years. Many states have imposed even shorter time limits than the federal requirements. In the typical state, after a welfare family has received a total of 60 monthly benefit checks, a lifetime ban from further welfare eligibility goes into effect.

With each month a family participates in welfare, no matter how small the amount of their benefit, a time-limit clock ticks one month closer to the end of their welfare safety net. States can provide exemptions from the time limit (for example, the time-limit clock can pause for victims of relationship violence), and states also can provide a limited number of extensions (extra time can be added for families who reach their time limits). But currently only seven states provide such exemptions for welfare families who also have earned income.

Illinois, Maryland, Oregon, and Rhode Island provide comprehensive time-limit exemptions for employment (see table). Three other states provide limited exemptions, for people working in certain state-subsidized jobs (in Arizona and Missouri), or for the first six months of employment (in Louisiana). In the few places where they are available, these time limit exemptions require

STATE *TANF* TIME LIMIT EMPLOYMENT EXEMPTION POLICIES (OCTOBER 1999)

No time limit:	2 states (Michigan and Vermont)
Blanket exemption for working:	4 states (Illinois, Maryland, Oregon*, and Rhode Island)
Limited exemption for working:	3 states (Arizona*, Louisiana*, and Missouri*)
No exemption for working:	42 states and the District of Columbia

Source: State Policy Documentation Project: Information on state time limit policies for TANF cash assistance.
*Note: Though available in principle, exemptions are unlikely to be applied in practice in Arizona, Louisiana, Missouri, and Oregon. In those states, a single-parent family of three with earnings of $618 a month for more than a year would not be eligible for welfare. As of January 2000, the monthly earnings limit was $586 in Arizona, $310 in Louisiana, $382 in Missouri, and $616 in Oregon. (The monthly limit was $1,131 in Illinois, $642 in Maryland, and $1,278 in Rhode Island.)

substantial work effort. For example, for an Illinois welfare family with one adult, the adult must work at least thirty hours a week to pause the time-limit clock. Finally, two states (Michigan and Vermont) are not yet subject to federal time limit requirements because of special circumstances.

In four of the seven states with statutory exemptions (Arizona, Louisiana, Missouri, and Oregon), exemptions are unlikely to be of much value to welfare recipients anyhow, because their earnings limits for welfare eligibility are so low. In a fifth state (Maryland), the exemption is likely to be of marginal value for a recipient working thirty hours a week at the minimum wage (since the Maryland earnings limit of $642 exceeds the $618 cut-off by only $24 a month). Thus, only two states (Illinois and Rhode Island) currently offer exemptions that are of practical value for working welfare recipients.

This situation seems inconsistent with the spirit of the 1996 welfare reform, which ostensibly was intended to encourage and reward work. Many welfare recipients today work a substantial number of hours each week at low wages, and find that they only qualify for welfare benefits of, say, $50 a month, compared to benefits of several hundred dollars a month for recipients who do not work. But at the end of the time-limit, both working and nonworking recipients lose welfare benefits forever, and nonworking recipients will have received much more money from the state. Except in the few states that provide time-limit exemptions, working families eventually will lose both their supplementary benefit checks and the the possibility of relying on welfare during a future period of job loss. Unless exemptions from time limits are provided for those who play by the rules and show substantial work effort, many families whose welfare time limits run out may have cooperated with the reform policy only to sink below a viable income. This situation seems to be the result not of a deliberate policy choice, but of a lack of foresight on the part of policymakers.

Welfare time limits already are starting to run out in states that elected shorter limits than the federal maximum of five years. According to the SPDP, the first families reached their time limits before the beginning of this year in 16 states. Families in an additional four states will reach their time limits this year, and time limits will start to run out in another 29 jurisdictions over the next few years, possibly throwing thousands of families into destitution. Exemptions from time limits for families who combine work with welfare soon may become an urgent concern.

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Further information on welfare reform can be found on the Devolution page of the Joint Center website.

Information available on the SPDP Internet website was collected through surveys completed by a key policy advocate in each state. State agency staff were given an opportunity to confirm the information, and SPDP staff verified the answers against state statutes. Currently available are 50 state policy comparisons and individual state policy descriptions on TANF applications, time limits, categorical and financial eligibility, Medicaid, and Reproductive Health Provisions and Teen Requirements in state TANF programs. ■

For more information on this and related topics, visit our website.