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Standing Against Racism in the Wake of Terror

This Perspective is being written the day after Pearl Harbor II—the "bombing" of The World Trade Center and the Pentagon by terrorists. I happened to be a mile or so away from the Pentagon in Crystal City, Virginia, when America's symbol of power and democracy was struck. I heard the boom and later saw some of the devastating, war-like, horrific aftermath of both the New York and Washington attacks. I will never forget September 11th and the American and United Airlines planes seemingly highjacked for their symbolic significance.

I had planned to write this Perspective on The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), which came to a close September 7, 2001, in Durban, South Africa. A resounding testimony to the value of convening the World Conference and the seriousness of the issues on the table was the fact that 2,300 representatives from 163 countries, including 16 heads of state, 58 foreign ministers, and 44 ministers, officially participated in the landmark gathering. Close to 4,000 NGOs and over 1,100 members of the media joined these delegates. This diverse and distinguished group came together and candidly discussed and debated the problems of racism and discrimination not with a naive intent to solve these age-old evils, but to engage in constructive dialogue, address painful issues head-on, and lay a strong foundation for future discourse and action.

Given the Joint Center's legacy of addressing core quality-of-life issues—racial discrimination, access to quality education, economic equity and political empowerment—it was crucial that we participate in this dialogue, and we were well represented at the World Conference in Durban. Gayla Cook, program director, and Simphiwe Mngadi, deputy director of the Joint Center's South Africa office, attended along with Maggie Potapchuk, senior program associate with the Joint Center's Network of Alliances Bridging Race and Ethnicity (NABRE) project. Since 1993, the Joint Center has operated an office in Johannesburg, South Africa. Our work there focuses on democratic institution-building, strengthening grassroots participation in governance, and economic empowerment. NABRE, launched in 2000, is a network of 129 local and national organizations that works to overcome racial and ethnic divisions.

I was sorely disappointed when the Bush Administration pulled out of the World Conference, but elated that, after intense negotiations, a consensus text was adopted and practical next steps were developed. The World Conference declared a "Programme of Action" that commits members to measurable actions to combat racism and discrimination at the international, national, and regional levels. For the first time, a document of this magnitude was agreed upon and approved by key stakeholders. To reach this kind of consensus, even without the U.S. and Israel, is quite extraordinary.

All of us, not only here in America but around the world, are still too stunned by the terrorist attacks to think about how we should direct our future. For some, it will be easy to regard the hard-won declaration of principles from Durban as light-weight idealism, to be filed away and ignored. But we cannot disregard tenets based on freedom, justice, and democracy for all the world's citizens. We must, I believe, work against the temptations of both cynicism and revenge—neither can lead very far.

While swift punishment of the perpetrators is well deserved, it alone will not and cannot stop the deepening cycle of terror. This is a defining moment for America. It is well worth standing up and speaking out for the principles we hold so dear—and matching our words with courage. ■

PRESIDENT

Houston's Neighborhood-Oriented Government

Expanding the concepts of community policing to municipal government can make a city "work" for its citizens

By Mayor Lee P. Brown

In 1982, I became Houston's first African American chief of police and the first chief in over 40 years from outside its own ranks. During my 20 years in law enforcement before coming to Houston—in San Jose, Portland (OR), and Atlanta—I had been formulating and refining, with the input of many colleagues, a new concept of policing called "community policing."

In the late 1960s, I was a patrolman in San Jose, California. It was a turbulent time, perhaps even more so in the San Francisco/Berkeley Bay Area than in most other cities. Nevertheless, I was comfortable patrolling neighborhoods in my beat and sensed a positive response by the community to my presence. With the support of the chief, we began a program of assigning officers to communities on a permanent patrol basis, rather than by a rotation. The goal was for the officers and citizens to achieve a heightened level of communication and a new trust. The ultimate goal was to "keep the lid on" situations that had the potential of becoming volatile.

In the 30 years since, community policing has caught on around the country. A recent study indicates that 60 percent of police forces use some form of community policing. Many cities have constructed police storefronts in neighborhoods that could benefit from a permanent police presence. The city of Houston has 30 such police storefronts.

Community policing is successful because it honestly solicits the neighborhood residents' suggestions, complaints, and concerns. The police become a conduit to city services and function as a partner with neighborhoods. Neighborhood-oriented government in Houston works on these same principles.

Houston, a Diverse and Global City

With approximately 2 million people within its city limits, Houston is the fourth largest city in the country. First-time visitors are usually struck by how green and clean the city is. The city has attracted a large number of immigrants from many parts of the globe, so it has become a diverse cosmopolitan city with a number of immigrant "pockets" scattered around. Despite its diverse population, Houston is one of the few large American cities to have moved through the era of racial strife without any major civic disruption, and certainly no riots.

Overall, Houston's economy is doing very well. All the indicators—employment, sale of new and re-sold homes, office occupancy both downtown and suburban, air passengers, port exports—show that the city, according to the London-based *Economist* magazine, "may be the next great global city." In fact, Houston already is a global city, with 74 consulates and one out of every three jobs tied to international trade.

The strong economy has helped us create a new downtown—and it is becoming every Houstonian's neighborhood. Thousands of residents come downtown to the new restaurants and the new Astros' ballpark, as well as to the theater district with its four permanent companies in ballet, opera, symphony, and theater. Because the economic climate is so good—and because it is infectious—many neighborhoods have greatly benefited from nearby private investment.

Neighborhood-Oriented Government

Expanding community-oriented policing into the concept of neighborhood-oriented government was greatly helped by the enthusiasm for the approach within my administration. I have always felt strongly that the people dedicated to working in public service are open to fresh and new ways. Neighborhood-oriented government (NOG) appeals to our city employees because it is a service-based concept designed to guide local government's ability to improve the quality of community life. For the citizen—the consumer, if you will—NOG affirms the importance of neighborhood involvement as a critical component of effective government. In effect, it returns power to the people.

NOG is a proactive, ongoing partnership among individual citizens, community volunteers, neighborhood associations, civic organizations, businesses, private-sector leaders, schools, elected officials, and city employees to provide effective and efficient city services. Citizen participation in NOG is the key to the success of this philosophy. Citizen participation made community-oriented policing successful, and I believed it would work in the same positive way in my administration for all of city government.

NOG has three broad principles: (1) solving problems at the neighborhood level, (2) improving access to city government, and (3) delivering city services in a prompt and courteous manner. Discussed below are the programs that the city of Houston has developed based on these principles.

Lee P. Brown is the mayor of the city of Houston, Texas, and previously served as the city's chief of police.

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Houston

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Problem Solving at the Neighborhood Level

The Super Neighborhood Program was created in the summer of 1999 to provide avenues for more effective community input into city government policymaking, budgeting, planning, and service delivery. A geographic framework of 88 Super Neighborhoods was created to encourage residents of neighboring communities to work together to identify, plan, and set priorities to address the needs and concerns of their communities.

The boundaries of each Super Neighborhood rely on major physical features—bayous, freeways, and the like—to group together contiguous communities that share common physical characteristics and infrastructure. A Super Neighborhood Council serves as a forum where residents and stakeholders can discuss issues, identify priority projects for the area, and develop a Super Neighborhood Action Plan, or SNAP.

Along with offering residents real solutions to neighborhood problems, the SNAP is a valuable tool for the city as it plans and funds its capital improvements. The City of Houston Capital Improvement Plan budget for fiscal years 2002—2006 totals $2.4 billion, and we are anxious to work with the Super Neighborhoods to ensure that these funds go toward appropriate and worthy projects. Depending on communities' needs, projects might include street re-paving, a new hike-and-bike trail, a relief sewer, water main replacement, treatment plant refurbishing, renovation of police and fire stations, a new tennis court, renovation of a branch library, resurfacing of a parking lot, and a host of other needs. The list is limited only by the needs identified. If a project is needed and the residents want it, we will work it into the city's capital plans.

Super Neighborhood Council meetings are held on a regular basis. Frequently, two or three Super Neighborhoods join together. Department directors accompany me to these meetings so that we can give detailed answers to citizens' questions. To date, attendance at these meetings has been gratifying, typically averaging about 100 citizens at each meeting.

The Super Neighborhood program encompasses a number of important neighborhood-oriented initiatives:

- *Neighborhoods to Standards.* This program is designed to bring city services up to the same standard throughout the city's many neighborhoods so that residents will enjoy the same level of service no matter where they live. Services provided by this program include, for example, street overlay, removal of dangerous buildings, and installation of additional street lighting.
- *Clean Neighborhoods.* This initiative relies on the active participation of residents, civic clubs, and businesses to pick up litter, paint over graffiti, eliminate illegal dumpsites, and otherwise clean up neighborhoods. In its first year, neighborhood volunteers, working with city departments and the nonprofit organization "Keep Houston Beautiful," targeted six neighborhoods—three inner-city historic neighborhoods with large residential populations and three heavily trafficked business corridors. The National Partnership to Prevent Urban Litter, a coalition between the U.S. Conference of Mayors and Keep America Beautiful, subsequently chose Houston as a demonstration and research site and a model for other cities.
- *Operation Renaissance.* This neighborhood clean-up program focuses on eliminating illegal dumping and heavy trash violations in two of Houston's most historic areas, the Second and Third wards. First, the City's Public Works and Engineering Department took part in a massive cleanup of the two wards. Now the program uses an aggressive police presence to enforce the no-dumping law. Another program component focuses on graffiti abatement.
- *Parks to Standards.* This renovation effort in many of the city's 293 parks is one of the largest such parks programs in the nation. Like schools, parks are essential to neighborhoods and well worth the investment. In a very real way, parks empower neighborhoods: families utilize them and quickly realize the inherent value a park brings to the community. Super Neighborhood Councils also are encouraged to give advice about where new parks should be located.
- *Schools to Standards.* This program was created to upgrade signage, street lighting, drainage, and other infrastructure projects around schools to make them safer, more aesthetically pleasing, and more functional.

Problem solving at the neighborhood level works. In very short order—just two years in fact—neighborhood councils became extremely active and more effective. City departments—notably police, fire, and public works—have a heightened presence throughout the city, and the citizens feel responsible for their communities' destiny.

Improved Access to City Government

Improving access to city government is the second underlying principle of effective neighborhood-based government. Empowering communities so that they are involved in their own future demonstrates to the citizens that the municipal bureaucracy is, indeed, navigable and thus leads to even more involvement in their government. Several city initiatives are directed at improving citizen access both to city services and to city officials.

- *Town Hall Meetings.* These meetings are held across the city so that citizens can ask questions about city services and facilities and voice their views about how to improve the quality of life in their neighborhoods. The meetings afford citizens the opportunity to meet directly with department directors to discuss issues and resolve problems. We have also held town hall meetings for the African immigrant community and people with disabilities.

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The Incarceration Generation

When parents go to prison, what happens to their children?

By Vesla M. Weaver

As a result of the "zero-tolerance" policies—truth-in-sentencing, mandatory minimum drug sentencing, and three-strikes policies, among others—today nearly two million people are in prison or jail. The rate of imprisonment has quadrupled in three decades; at the same time, the average prison sentence length has grown substantially. Whatever effect the "get-tough" movement has had on crime, unintended victims have been punished along with the mostly low-level drug offenders that the war-on-drugs targeted. These victims are children, separated from their parents.

Who Are These Children?

In 1999, state and federal prisoners were parents to approximately 1.5 million children under age 18, or about 2 percent of all minor children in the United States, according to the Bureau of Justice Statistics. The majority of state (55%) and federal prisoners (63%) had at least one minor child, and one-fifth of federal prisoners had at least three children.

Black children are much more likely to have an incarcerated parent. Seven percent of all black children in 1999 had a parent who was currently incarcerated, compared to less than 1 percent of white children and 2.6 percent of Hispanic children.

Prisoners' children are very young; about one in five was under age five, and most were under age ten; the average age was eight. Most were separated from the incarcerated parent at an early age and for a considerable time. The average sentence length for inmates in state and federal prisons was 12 and 10 years, respectively.

Who Are the Parents?

About half of all inmate parents are black, and the vast majority (93%) are fathers. Parents in state prison are less likely to be imprisoned for violent offenses than non-parents (44% vs. 51%) and are much more likely to be imprisoned for drug offenses (24% vs. 17%).

Over half of parents in state prisons had been previously incarcerated. A little less than half (44%) of inmate fathers in state prison had had at least three prior convictions and, thus, were more likely to have been previously separated from their children.

Among inmates in federal and state prisons with children, nearly half (46%) had lived with at least one of their children prior to imprisonment. Inmate mothers in state and federal prisons (64% and 84%, respectively) were much more likely to have lived with their children before admission than were inmate fathers (44% and 55%, respectively). Nearly one in five imprisoned parents reported that they were the only parent living with their child or children before their sentence terms began.

Almost all incarcerated fathers—over 90 percent—reported that their children were living with their mother, while not even a third of imprisoned mothers had children living with their father. Children of incarcerated mothers were much more likely to be placed with a grandparent (53%) or another relative (26%). Moreover, one of every ten mothers in state prisons reported having a child in foster care, compared to only 2 percent of inmate fathers.

What Are the Costs?

The most obvious and measurable impact of incarceration on these children is the financial strain it causes. The majority (56 percent) of state inmates reported that they contributed to a household income before they were imprisoned. Over 70 % of prison inmates with children reported that they were working in the month prior to their arrest, and most inmate parents in state and federal prisons (46% and 53%, respectively) had incomes of over $1,000 a month. Because incarceration forcibly removes this income, prisoners' children inevitably feel the effects. Consider the fact that almost one-third of poor fathers who do not pay their child support are incarcerated. Further, because felon drug offenders are now prohibited from receiving welfare and other forms of subsidies, many imprisoned parents will face economic hardship upon their release.

Children of prisoners are about six times more likely than other children to be incarcerated themselves at some point in their lives. One of every ten of these children will be confined in a correctional facility during his youth. Of all juveniles currently in correctional institutions, half have at least one parent who is or has been in prison.

In 1991, six percent of female inmates were pregnant at the time of their admission to prison. Inmate pregnancies give rise to a set of issues that are frequently neglected by the corrections and social services systems. Many prisons are not equipped to give pregnant inmates adequate prenatal care or gynecological exams. In addition, the prison mother is returned to her cell as little as 24 hours after giving birth and has little or no further contact with the infant during her imprisonment. It is no surprise then that children of incarcerated mothers have the greatest infant mortality rates of all children. One study found that preschool-aged children and infants who had been separated from their

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Ms. Weaver was an intern at the Joint Center, Summer 2001.

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imprisoned mothers exhibited an array of negative behavior including "constant crying, little response to stimulation, little effort to crawl, and incidents of self-punishment."

Effects of Parental Contact

Many incarcerated parents (60% of inmate mothers and 40% of inmate fathers) maintained weekly contact with their children, either by phone or mail or through visits. Personal visits with the children were rare, however; over half of both incarcerated mothers (54%) and fathers (57%) had not seen their children in person during imprisonment. In addition, prisons can make phone calls and visits difficult and financially burdensome. For instance, the cost of a call for prisoners in New York state is $3.33 for the first minute and 33 cents for each additional minute, a rate much higher than that paid by the non-incarcerated population.

Parents who have the most contact with their children during incarceration are more likely to take an active parenting role after their release. In addition, those who receive any kind of counseling or training during their confinement are more likely to adapt well to reunion with their families. Prisoners who have frequent contact with family during their imprisonment are also more likely to successfully reintegrate into society upon release and have less chance of reoffending. One study found that if a released prisoner had a family to which he could return he was more likely to complete parole and less likely to end up back in prison.

But most prisons are far from the communities from which prisoners come. Most inmates with children (62% of those in state prisons and 84% of those in federal prisons) are in prisons located at least 100 miles away from their former homes, making personal visits costly and difficult. Courts do not take into account proximity to family when assigning prisoners to a correctional facility; a Wisconsin court ruled that children have "no constitutional right to insist that their mother be imprisoned at a convenient location."

Policy and Program Options

Children of incarcerated parents exist within a policy and program vacuum, at the periphery of child welfare agencies and programs. Programs specifically for incarcerated parents are scattered, local, noncollaborative, and short-lived. However, there is substantial evidence that some programs can alleviate the problems these children endure.

Some programs offer alternatives to incarceration. Community parent-child residential confinement allows mothers to serve their sentences while remaining with their children. Through this alternative, mothers do not risk losing permanent custody, can work and financially provide for their children, and can maintain contact. Moreover, studies of parent-child community residences found that 80 percent of women participants were employed after their release, and less than one in ten returned to prison. Many children are not served by these programs because they are only offered to mothers. Live-in programs should be expanded to incorporate nonviolent inmate fathers who were their children's primary caregiver prior to incarceration. Another type of program, called an Intermediate Supervision Program (ISP), allows low-level offenders to opt for longer probationary sentences with strict supervision instead of short-term confinement.

A primary goal of policies should be to increase opportunities for contact by the majority of incarcerated parents who remain ineligible for programs that offer alternatives to incarceration. The Centerforce Program improved accessibility for prisoner families by getting legislation passed that required facilities with more than 800 prisoners to construct and maintain visiting centers. Some programs are also aiding in transportation to the facility, one of the biggest obstacles for visiting families. Another possible policy change would be to make minimizing the distance between prisoners and their children a priority during sentencing.

Very few programs are aimed at facilitating the ex-inmate parent's re-entry into the family as a responsible parent. Even though over two-thirds of female inmates had at least one child, only 14 percent were given child-rearing courses. Even fewer programs are targeted directly toward the child of the inmate. Girl Scouts Beyond Bars allows for girls and their confined mothers to have Girl Scout meetings in the correctional facility, thereby providing a positive forum through which child-parent relationships can form. However, the program only serves female children of incarcerated mothers, a small minority of all children of inmates. It is imperative that programs and policies begin to incorporate the children of imprisoned fathers. Research has shown that imprisoned fathers who have participated in parent-child programs during their incarceration learn to "interact with their children in ways which deter the development of intergenerational criminal behavior and delinquency."

Finally, the number of children of once-incarcerated parents is growing. As of today, approximately 10 million children, or 14 percent of all minors, have had an incarcerated parent at least once during their childhood. This growing population demands immediate attention not simply from a sense of moral obligation, but to combat delinquency, recidivism, and the growing trend of intergenerational incarceration. ■

For more information on programs and publications for children of incarcerated parents, go to the Family and Corrections Network Website: www.fcnetwork.org. For statistics on African Americans and the criminal justice system, visit the Joint Center's DataBank at http://www.jointcenter.org/databank.

Adams Mark Boycott Renewed

Discrimination Suits Continue As Settlement Collapses

By Mary K. Garber

In April 1999, an estimated 100,000 black college students and recent graduates headed for Daytona Beach for the annual celebration of Black College Reunion (BCR), a three-day party at the beach. The event originated in 1984 out of the athletic rivalry between the local Bethune-Cookman College and Florida A&M University, but it soon evolved into a Spring Break especially for black college students. For many of these Generation Xers who attended in 1999, the event became a harsh and expensive reminder of what life was like for blacks in the South before the enactment of the 1964 Civil Rights Act.

Black guests at the upscale Adams Mark Hotel, which served as headquarters for BCR, alleged that they were subjected to humiliating treatment, even while being grossly overcharged for their rooms and amenities. They said they were required to wear neon orange wristbands for identification, forced to prepay for rooms and amenities, and overcharged for their rooms. Several employees confirmed that hotel policies for cancellations and late check-out were harsher for black guests than for white ones. In all, a different set of rules seemed to prevail during BCR, and these rules were much more restrictive than those in effect during larger, mostly white events such as Spring Break, Bike Week, and Race Week—all held in Daytona Beach. In fact, BCRers alleged that white patrons staying at Adams Mark *during* BCR did not endure the same restrictive rules.

Overall, the hotel's actions suggested that its management thought of its black guests as potential criminals. The hotel beefed up its security, hiring off-duty police officers, setting up barricades, and locking exits to control access to the facility. These measures were taken even though BCR had never produced any more security problems than other comparable, mostly white-attended events.

For this offensive treatment, black patrons paid dearly. Whereas regular room rates at Adams Mark were $139 per night, black patrons during BCR paid $655 for the minimum two-night stay. Visitors to the rooms, even if staying for only a few hours, were required to purchase orange wristbands for $50. In addition to the $100 room deposit required with their reservations, black patrons paid additional fees for telephone service, video rentals, and access to the in-room bar. Only BCRers were asked to pay these deposits; not white patrons during the same weekend or patrons at other events throughout the year.

Shortly after the events of 1999, the NAACP, the Lawyers' Committee for Civil Rights under Law, and several private law firms filed suit, on behalf of five young people who said they were mistreated at the hotel, for violations of the 1964 Civil Rights Act. The Florida attorney general joined the suit, and the U.S. Department of Justice filed a separate suit against the hotel chain. The NAACP took further action, instituting a nationwide boycott of the hotel chain that called for its members to refrain from doing any business with the HBE Corporation, the St. Louis-based company that owns Adams Mark.

The NAACP and other civil rights organizations reacted promptly to the allegations of mistreatment, partly because the hotel has a history of racial discrimination complaints, raised both by employees and guests. In fact, over the past decade, HBE has been sued at least seven times for racial discrimination, with awards topping $10 million. A suit by the U.S. Equal Employment Opportunity Commission resulted in an award of nearly $5 million to two former employees who had charged the company with racial discrimination. The National Bar Association, a professional association of black attorneys, charged that its members experienced discrimination and "racially insensitive" mistreatment during its 1992 convention at the Adams Mark in St. Louis.

In March 2000, before the BCR case could go to court, the company agreed to a settlement of $8 million and compulsory diversity training for its employees. But in October, a federal judge invalidated the class-action settlement on procedural grounds. With an appeal of that decision currently under way, the company has now backed away from its promise to support the settlement. HBE did settle with the Justice Department. Under the provisions of this settlement, the company agreed to undertake diversity training for employees and to be subject to monitoring for compliance. Still, the company refuses to apologize or admit to having discriminated.

Because the company has refused to support the settlement or issue an apology for its conduct, the NAACP reinstituted its call for a boycott. At its meeting in July, NAACP President Kweisi Mfume called on the organization's membership, along with "all Americans of good conscience," to stop doing business with Adams Mark. The company entered its own lawsuit to prevent the boycott by the NAACP, even though the courts have uniformly upheld the right of peaceful protest against racial discrimination. When a federal judge refused to grant an injunction against the boycott, the company had no choice but to drop the suit. In August of this year, about 150 people peacefully picketed outside the Adams Mark hotel in Daytona Beach, Florida, to protest the hotel's mistreatment of black guests during the 1999 Black College Reunion.

In November, the case goes to court in Orlando. ■

Ms. Garber is interim editor of *FOCUS*.

Houston

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- *Mayor's Night In*. This program gives citizens direct access to their City Hall. Citizens are periodically invited downtown to visit the City Hall in the evenings to meet with their mayor, department directors, and members of the City Council.
- *Mayor's Mobile City Hall.* Designed to complement the town hall meetings and Mayor's Night In, the Mobile City Hall is a large van, parked at locations where large crowds are gathered—parks and shopping centers, for example. We make sure that the presence of the Mobile City Hall is well advertised before the day of the event. This program makes city resources more accessible to people with limited ability to leave their immediate neighborhood—seniors, people with disabilities, and those who simply cannot get downtown.
- *Citizens' Assistance Office (CAO).* This office provides citizens with direct access to the mayor. Each day, the CAO submits a report to the mayor that documents citizens' telephoned comments for that day. CAO employs specialists to receive phone calls from residents and refer complaints directly to the appropriate city department. The specialist remains in contact with the citizens until the problem is resolved. Community liaisons in this office work with more than 600 civic organizations in the city. Last year, this office handled more than 60,000 requests for service.
- *Municipal Satellite Courts.* The City has created five new satellite courts to make municipal court services available in Houston neighborhoods. Houstonians can use these neighborhood courts to take care of citations for certain traffic, parking, and other violations rather than coming downtown.
- *Mayor's Office of Immigrant and Refugee Affairs.* Created in June 2001, this office assists immigrants with accessing and using basic city services such as our network of health clinics. This program allows us to ensure that their children are properly immunized and receive the other services they need.
- *3-1-1 Non-Emergency Phone Service.* This service, which is nearing completion, will allow citizens to use a single telephone number to access most city departments.
- *Web site.* Information about all of the above programs, plus much more about individual city departments, is available at the city's website, http://www.cityofhouston.gov.

Delivering City Services Promptly, Courteously

This final principle is essential to neighborhood-based government. Access to services is not enough; citizens must receive those services in a timely and pleasant manner, otherwise we have failed. Our Continuous Management Improvement initiative asks each department to constantly evaluate the time required for obtaining equipment and supplies, the accuracy of meter readings and all measurable processes, and response times to requests by citizens. We have a "Mystery Shopper" that constantly tests how we deliver services.

For me, neighborhood-oriented government has been one of the most exciting aspects of being mayor. Only the bounds of our imaginations have limited us in offering new ways for people to interact with their municipal government and to receive the services they rightfully deserve. It has been gratifying to see so many citizens becoming involved in their neighborhoods and in Houston's future. ■

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TRENDLETTER

POLITICAL REPORT

Commission Recommends Election Reform Guidelines

By Quintin J. Simmons

Former U.S. President Jimmy Carter returned to the White House July 31 to deliver an election reform report to President Bush and his administration. Carter and former President Gerald Ford co-chaired the National Commission on Federal Election Reform, put together shortly after Florida's election controversy.

Organized and sponsored by the Century Foundation and the Miller Center of Public Affairs, the 21-member commission, composed of both Democrats and Republicans, recommended that the federal government provide money and guidelines to states for reform measures, but gave states considerable discretion in deciding how to spend the money and meet the guidelines.

The 100-page report offered a number of specific proposals, including returning the right to vote to ex-felons after they have served their prison and parole terms and making election day a national holiday. Other recommendations in the report include:

- *Accessibility*—Congress should insist that states purchase and use voting technologies that accommodate disabled voters, as well as those who are illiterate or cannot speak English. The accommodations for these voters should still allow them to cast a secret ballot.
- *Basic voter information*—Every jurisdiction should provide a sample ballot and basic information about the voting procedures to each voter prior to the election. This information should describe rights, responsibilities, and complaint procedures.
- *Outcome projections*—News organizations should voluntarily refrain from projecting the outcomes in any state until the polls have closed in all states, with the exception of Alaska and Hawaii. If the organizations refuse to comply voluntarily, Congress should impose a plan for uniform poll closing for Presidential elections.
- *Residual votes/or spoiled ballots*—Congress should establish a maximum level of spoiled ballots considered acceptable, including overvotes and unintended undervotes.
- *Statewide provisional voting*—Federal law should require all polls to offer provisional ballots to voters who believe they are registered anywhere in the state. Election officials should adopt procedures for counting these ballots, after confirming the voter's registration status, before certifying the vote count.

Bush welcomed Carter, saying that he supported the election reform principles contained in the report. However, Bush did not take a position on any specific proposals.

Many Democrats were displeased with the committee's suggestions, contending that the commission did not go far enough. They said some changes, such as provisional ballots for voters whose registration status cannot be immediately resolved, should be treated as civil rights mandates. Furthermore, many Democrats don't like the idea of election reform being suggested or voluntary. Senator Christopher J. Dodd (D-CT) voiced his disapproval. "In our view," Dodd said, "the disenfranchisement of upwards of six million Americans, who are disproportionately poor, minority, and disabled, merits more than a voluntary approach to reform."

Ford did not attend the White House meeting due to health problems. The two other co-chairs of the commission were former Republican House minority leader Robert H. Michel and Lloyd N. Cutler, a Washington attorney and former White House counsel to President Bill Clinton.

Schools Resegregate

A study from The Civil Rights Project of Harvard University has found that segregation within the nation's schools has returned. The study, entitled "Schools More Separate: Consequences of a Decade of Resegregation," concluded that classrooms grew more segregated in

the 1990s. More than 70 percent of black students now attend schools with predominantly minority student bodies, a sizable jump from 63 percent in 1980, the low point for school segregation. Nearly a third of black children attend schools that are 90 to 100 percent minority. According to principal author and co-director of the project Gary Orfield, segregated schools undermine the educational prospects of black and Hispanic children. He cites evidence that desegregated schools improve test scores and bring other positive changes to the lives of students.

The study's analysis of educational and census data from the 1998–99 academic school year found that segregation re-emerged in grades K to 12 despite the increasing diversity of the general population and support for integration in public opinion surveys. The rapid growth of minority populations in the nation's suburbs, well documented by the 2000 Census, did not result in more integration of suburban schools.

One particularly noteworthy finding is that southern schools are becoming resegregated. Between 1964 and 1988, the South had the greatest increase in racial integration of any region. In a dramatic reversal of the region's historic separation of the races, southern schools were the most integrated in the nation by the beginning of the 1990s. Much of the progress made by southern black students since the 1960s, however, was reversed during the 1990s. Another ominous trend is the increasing residential isolation of Latinos, who are on the verge of becoming the nation's largest minority.

While public schools remain more integrated today than they were prior to the civil rights movement, they are resegregating at accelerating rates. This may spell trouble for minority students. "Minority students with the same test scores tend to be much more successful in college if they attended interracial high schools," Orfield noted.

This disparity is likely the result of the unequal educational opportunities offered by majority black and majority white schools. According to Orfield, a map of schools attended by the average black or Hispanic student would almost perfectly match a map of high-poverty schools. These poorer schools have fewer teachers qualified in their subject areas, more parents lacking political power, more frequent health problems among students, and lower test scores.

The study's researchers noted that much of the progress for black students since the 1960s eroded during a decade that featured three Supreme Court decisions limiting remedies for segregation. The report attributes the recent resegregation to these and other court decisions that have reversed desegregation orders, a decline in federal support for desegregation measures, persistent housing segregation, and demographic shifts.

Full copies of the report can be downloaded from the Civil Rights Project web site at http://www.law.harvard.edu/civilrights.

Court Nixes Georgia's Admissions Policy

In another blow to affirmative action in education, a federal appeals court three-judge panel has struck down a University of Georgia admissions policy aimed at improving racial diversity on the campus. Under the policy, some applicants were given extra points in admissions calculations based on their minority status. But the three judges unanimously ruled that having more nonwhite students does not necessarily equal a more diverse student body.

Under the now suspended policy, 90 percent of the students were accepted based on only test scores and grades; the remaining 10 percent were issued points on the basis of race and alumni relatives, with nonwhite applicants given preference. University officials pointed out that the policy was necessary to correct past discrimination. No black students were allowed to attend the University of Georgia prior to1961, meaning that school was nearly all white for its first 160 years. Currently, black students make up less than 6 percent of the student body while the state of Georgia is more than a quarter black.

The court wasn't convinced by the university's reasoning. Judge Stanley Marcus, a Clinton appointee, wrote in the court's opinion that while it is acceptable to consider race when attempting to encourage diversity, it cannot be presumed that all minorities automatically contribute more to campus diversity than white students. The opinion stated that the policy failed the test of strict scrutiny because it awarded points solely on the basis of race without taking into account "other factors relevant to diversity."

While the university is expected to appeal the decision, it is unknown whether the case will go to the full appeals court or the U.S. Supreme Court. The school is in the process of reviewing the ruling and determining its next step.

The ruling is the latest in a series of conflicting decisions by different appeals courts on the issue of affirmative action in higher education. (See July/August 2001 *FOCUS.*) Many observers believe that the U.S. Supreme Court will finally be compelled to take an affirmative action case this term in order to clear confusion about the legality of the practice. Given the current make-up of the High Court, its decision could mean the end of affirmative action nationwide. ■

ECONOMIC REPORT

Bush Backs DOT in Adarand Case

By Margaret C. Simms

With the U.S. Supreme Court scheduled to hear arguments this term in the latest appeal in *Adarand Constructors* v. *Mineta*, the Bush administration surprised some observers by filing a brief with the Court in mid-August in support of the U.S. Department of Transportation's (DOT) minority business program. The first *Adarand* case began when the current president's father was in office. Although the defendant and transportation program being challenged have changed, the basic issues remain the same. Can the DOT's program meet constitutional muster? That is, did the Congress have a compelling interest in establishing it to remedy racial discrimination (the strict scrutiny test) and is the current Disadvantaged Business Enterprise (DBE) Program narrowly tailored to meet that interest?

Background

Identified as *Adarand VI*, the current case has its origins in a contract awarded in 1989 by DOT's Central Federal Lands Highway Division for work in Colorado. At the time, DOT had a provision that made additional compensation available to prime contractors who engaged certified disadvantaged businesses as subcontractors. Mountain Gravel, the prime contractor in this case, hired Gonzales Construction Company, a disadvantaged business, even though it had not submitted the lowest bid. The lowest bidder, Adarand Constructors, filed suit.

In 1995, the case arrived at the Supreme Court. The Court had previously ruled in *Richmond* v. *Croson* that state and local governments had to meet a high standard for any minority business programs they maintained. In that case, the Court seemed to imply that the federal government programs already in place did meet constitutional standards. However, in *Adarand* v. *Pena* (*Adarand III*), the Court ruled that the federal government was bound by the same standards as state and local governments. They remanded the case to the lower courts for a ruling on the twin standards of constitutionality: (1) compelling governmental interest and (2) narrowly tailored solutions.

After the 1995 ruling, the Clinton administration undertook an extensive review of all federal programs designed to provide greater contracting opportunities for minority-owned businesses. Under the administration's "mend it, don't end it" rubric, all federal agencies had to develop new or revised programs thought to be consistent with the requirements of the *Adarand* ruling. To meet the "narrowly tailored" standard, the government developed a concept called "bench-marking" to serve as a standard against which agencies could measure their contracting record for evidence of discrimination. Bench-marking required that agencies do an industry-by-industry analysis to determine the proportion of minority-owned firms in each. Then they were to compare the proportion of contracts their agency awarded to minority contractors in that industry to their availability in the industry. If the contract awards fell short of the availability, then the agency would be allowed to undertake special efforts to increase opportunities for minority firms.

During this review period, the original legislation that authorized the DOT disadvantaged business program expired. The replacement legislation, the Transportation Equity Act for the 21st Century (TEA-21), which passed in 1998, incorporated the new concept for disadvantaged businesses. The regulations flowing from the new legislation significantly altered the features of the DOT program. Previously, the state transportation departments which administer the bulk of the money for highway programs were asked to meet a minimum goal of awarding 10 percent of contracts to DBEs. Under the new program, they were asked to determine the number of "willing and able" minority firms in local markets in comparison to the number of all "willing and able" firms. Once a goal was established, states were to meet as much of the participation goal as possible through race-neutral strategies, such as outreach and technical assistance. Only for the unmet portion (where contracting fell below the benchmark) were they to make special efforts to contract with minority firms.

In addition to changes in the goal-setting process, the new regulations also changed the composition of the pool of eligible businesses. Owners who are members of racial or ethnic minorities are still presumed to be socially disadvantaged, but they are now required to meet a separate economic standard. Their personal net worth must be less than $750,000, a standard set by Small Business Administration programs. In one of the ironic twists of the *Adarand* case, this new net worth standard allowed Adarand Constructors to qualify as an economically disadvantaged business.

The Current Case

Even though Adarand is now eligible for the new DOT program, the firm has petitioned the courts to declare the program unconstitutional. What will be argued before the Supreme Court is the ruling of the federal appellate court (Tenth Circuit) in 2000 that the program is constitutional. In response to expressions of surprise over the Bush administration

decision to back the program, administration spokepersons explained that the case focuses on very narrow issues and support of the DOT program does not indicate the administration's views on the wider issue of affirmative action.

The administration brief addresses both the issues of narrow tailoring and of strict scrutiny. With regard to the issue of strict scrutiny, it summarizes the evidence considered by the Congress when it reauthorized the DBE program as part of TEA-21. This evidence was of several types "overt discrimination in the awarding of subcontracts: discrimination in the provision of business loans and bonding; and the adverse consequences of an 'old boy' network and bid-shopping practices that continued the exclusion of certain groups." The brief notes that the data showed a decline in minority contract awards when states suspended their own programs after the Croson decision. It also states that one source of information on the decline in contracting, a recent study by the Government Accounting Office (GAO), is actually cited in Adarand's petition.

GAO Study on DBE

The GAO study cited by both sides in the current case was mandated by the Congress in the TEA-21 legislation. In addition to summarizing how the new DOT program differs from the previous one, the report details: (1) the characteristics of firms receiving DOT-assisted highway and transit contracts; (2) the evidence of discrimination and other factors that limit DBEs' ability to compete for contracts; (3) the economic impact of the DBE program; and (4) the likely impact if the program were discontinued.

The report presents a mixed picture of the impact of the program and notes that the study was hampered by a lack of data essential for determining the program's full impact to date. It notes that critical information is either not maintained by the state departments of transportation or is not in the appropriate electronic form since DOT does not require states to transmit the information to the federal government. For example, to determine the number of disadvantaged minority firms "willing and able" to contract under the new regulations as a proportion of all firms, information is needed on the net worth and gross receipts of DBEs and non-DBEs. While states report that they have net worth information for DBEs, they have not put that information in a form that is accessible for monitoring purposes because they are not required to report it to DOT. The study also notes that states do not conduct their own surveys of minority firm availability. Instead, they rely on directories, which are useful for identifying potential contractors, but are not a precise measure of firm availability because of the number of duplicate entries.

Despite these shortcomings, the study presents considerable evidence that minority firms have more opportunity when there are special programs. Yet even with these programs minority firms continue to be underutilized. Under the new goal-setting process, average goal participation decreased from 14.6 percent in FY 1999 to 13.5 percent in FY 2000. The study finds that DBEs received about 7 percent of the prime contracts awarded and 2 percent of the federal dollars awarded for prime contracts in that fiscal year. The GAO study also cites a number of state studies that show steep declines in minority business participation when special programs have been discontinued.

While GAO was unable to obtain data from all states on the financial status of DBEs, the data that were available indicated most DBEs identified have annual gross receipts below $5 million, a relatively low figure. Of those DBEs awarded DOT-assisted contracts in FY 2000, 85 percent had gross receipts below that amount, and over half of them had a net worth of less than $250,000. Due to the small sample, GAO is not confident that these proportions hold true across the entire DBE community. Nevertheless, the figures do suggest that the firms engaging in the DBE programs have fairly modest economic means and would not have the opportunity to become competitive without special efforts.

Perhaps the most important part of the GAO study is its identification of data needs for effective program operation. It calls for the Secretary of Transportation to:

- put in place a method for states and transit authorities to assign unique identification numbers to determine the number of certified DBE in the country.
- require states and transit authorities to report on gross receipts of DBEs and non-DBEs and on the dollar amount of subcontracts awarded to non-DBEs;
- compile and analyze data on written complaints of discrimination; and
- compile information on the types of programs needed to assist DBEs.

If the Court rules that the current DBE program is constitutional, this type of information will be needed not only to determine program effectiveness, but to structure any DBE program included in the reauthorization of TEA-21 in two years.

For more information on the government's brief in the *Adarand* case and the GAO study, visit the Department of Justice (www.usdoj.gov) and GAO (www.gao. gov) websites. For information on *Adarand* and minority business programs, visit the Minority Business Enterprise Legal Defense and Education Fund website (www.mbeldef .org). ■