POINT OF VIEW

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Media "White-Out" Is A Hazard Blacks Must Overcome

("Black Candidates and the Media" was the subject of a panel discussion at a CBCF Issue Forum on September 27, 1984. The distinguished panelists were Roger Wilkins, the Pulitzer Prize-winning former editorial writer with the Washington Post, the New York Times and the Washington Star; Percy Sutton, Chairman Inner City Broadcasting Corporation and Mayoral candidate in New York in 1977; and Frank Mingo, Mingo-Jones Advertising Company. The following is an edited version of that session)

As Blacks in increasing numbers seek political office, their biggest obstacle may be to overcome bias in the media. Blacks must understand the media's "awesome power," said Percy Sutton. "We are not who we think we are but what the media says we are."

The media's power to destroy a candidacy was clear in an anecdote Roger Wilkins related. In 1977, when Wilkins was at the New York Times, the editorial board met to shape its editorial posture towards the Mayoral campaign. Sutton was one of seven candidates, and had been Manhattan Borough President for 12 years. Clearly, this was a serious candidate. Yet, because Sutton was Black, one Times editor suggested downplaying the Sutton candidacy with the statement, "I think we should look through the Sutton candidacy onto those who will be there towards the end." As Wilkins noted, this would be self fulfilling: "if enough people started looking through the Sutton candidacy... he won't be there at the end."

Percy Sutton responded that the Times did a "white-out on me."

"Constitutionally Incapable"

Roger Wilkins set the theme for the discussions with his observation that the media reaction to Jesse Jackson's candidacy had "made me reexamine my assumptions about the capacity of white journalists to cover black candidates." He set out his advice for Black office seekers on dealing with the media. First, make the firm assumption that white-owned media are "constitutionally incapable" of seeing "the universality of black people and black candidates." Wilkins described the experiences of reporters whose editors could not accept the stories they had filed; he quoted a producer from the T. V. news magazine, "Inside Story" that "every journalist who had dealt with the Reverend Jesse

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"Free South Africa" — A Talk With Randall Robinson

The growing protest movement against apartheid began on November 21, 1984, as leaders of the Free South Africa Movement walked into the South African Embassy in Washington, D.C. and were arrested. The leaders of the protest were Randall Robinson, TransAfrica, Congressman Walter Fauntroy (Dist. of Columbia), Dr. Mary Berry, U.S. Civil Rights Commission, all of whom were arrested, and Dr. Eleanor Holmes Norton, former Chair, Equal Employment Opportunity Commission, who left the Embassy prior to the arrests to notify the press and public.

The initial arrestees were soon joined by leading politicians, religious leaders, union officials and an increasingly difficult-to-classify assortment of protestors. The following Members of Congress have all joined the protest by demonstrating at the South African Embassy and being arrested: The Honorable John Conyers, Jr., (Mich.), The Honorable Charles A. Hayes (Ill.), The Honorable Ronald V. Dellums (Calif.), The Honorable George W. Crockett, Jr., (Mich.), The Honorable Don Edwards (Calif.), The Honorable Parren J. Mitchell (Md.), The Honorable William L. Clay (Mo.), The Honorable Robert Garcia (N.Y.), The Honorable Cardiss Collins (Ill.), The Honorable Mickey Leland (Tex.), The Honorable Louis Stokes (Ohio), The Honorable Harold Ford (Tenn.), The Hon. Julian Dixon (Calif.), and The Hon. Howard Berman (Calif.).

On December 13, 1984, Sherille Ismail, CBCF Policy Analyst, talked to Randall Robinson:

CBCF: "As recently as October 1984, [in an article protesting apartheid] you referred to the American citizenry as "unknowing, uncaring and

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Finally, critics argue that the prices of stocks of companies not doing business in South Africa will be driven up perhaps beyond their economic value by the influx of dollars from portfolios divesting. If this position is correct in its estimate of the volume of divestiture dollars and their impact on share prices, the only prudent action for trustees to take is to invest in South Africa free stocks early and enjoy the benefits of price appreciation. It is clear that those institutions divesting later will have to purchase those same stocks at higher relative P/E ratios.

Defendants' and Victims' Rights Clash in New Crime Bill

by Clifton Walker
CBCF Fellow

It has been called the most massive crime reform package in the last decade, altering a major philosophy of crime control this country has supported for approximately 20 years. The Crime Control Act of 1984 marks a distinct metamorphosis in national thinking, from the protection of the civil liberties of the accused to the protection of society and the victims of crime. Several interrelated, salient queries remain:

1) Were the austere changes in the Federal Criminal Code warranted?
2) Will the application and effect of these changes be equitable?
3) Is the civil liberty and due process of the accused and the rights of society and victims necessarily subject to a zero-sum analysis? This query is exacerbated when one views the relationship which some Blacks have with the criminal justice system. Competing interests are perhaps more profound in the Black community than in any other. The reaction Blacks will have to this recent crime bill will traverse every conceivable intellectual response and emotion. Some will be elated, others will view it with disgust and scorn. The irony of these reactions is that each of them is legitimate.

The rationales are cogent. In 1983, although crime remained exceptionally high, there was a decrease in crime in the United States from the previous year. Analogous, however, with the effect of supply-side economics, this reduction in crime did not trickle down to the Black community. According to the United States Department of Justice, Bureau of Justice Statistics (BJS) crime continues its siege on Blacks and their communities. Total percentages of violent crime and crime against property in Black households continues to outdistance those of their white counterparts. In fact, Blacks are the unequivocal expert victims of crime—an expert status anyone should take liberty in saying they vehemently detest. Thus, there is an obvious interest in combatting the escalating crime rate in the Black community. Juxtaposed with the concern for reduction in crime is the commanding interest in protection of civil liberties and due process of law—a concern which naturally focuses on protection for the accused. It is no revelation that most of the individuals engulfed by the criminal justice system are minority, poor, and under-educated or uneducated. Blacks unfortunately are disporportionately accused and convicted of crime.

Unlikely Alliances

A crime reform act of such magnitude that the ACLU would characterize it as a significant assault on civil liberties while the Heritage Foundation would term it a significant step in the "right" direction, had to have garnered strong bipartisan support. And so it did. The most unlikely quartet shepherded the crime package through the Congress, not counting President Reagan who sent his own version of the crime package to the Senate. Republican Senators Strom Thurmond (S.C.), Chairman of the Judiciary Committee,and Paul Laxalt Nev.), Chairman of the Subcommittee on Criminal Law,towed the conservative line, adopting many positions identical to the President's crime package. Liberal Democratic Senators Edward Kennedy (Mass.) and Joseph Biden (Del.), Judiciary Committee members, completed the unlikely alliance.

The President delivered his crime package to the Senate in March, 1983. At every opportunity thereafter, Reagan critized the Democratic-controlled House of Representatives for stalling the crime package. These criticisms did not go unanswered. Congressman Bates from California tersely responded, by pointing out that it took the Senate better than a year to pass the package and the House would not be so rushed.

"There is a general consensus that bail reform had to occur. The issue becomes whether the remedy of the new law balances with the harm."

The House did, in fact, withhold controversial sentencing and bail reform measures while passing portions of the Senate bill. House members had serious questions whether the sentencing and bail reform was too far-reaching although they too recognized the need for some type of action. Bipartisan proponents of the crime package prepared for a tough fight. In a carefully crafted move in late September, the Senate voted in favor of sending the Continuing Appripriations Bill for FY 1985 back to the Committee. The order was to add the Senate crime package. House Democrats had their own ideas in H5690 and gathered strong support, passing the bill 406 to 16 in early October. Later that month, Appropriations Committee members caucused with Judiciary Committee members from the Senate and the House.

Tough negotiation produced the current crime package which, although passed into law, sustains harsh criticism.

The New Law

A brief synopsis of the major reforms and amendments in the Comprehensive Crime Control Act follows:

Bail reform

Federal judges may now openly consider whether an accused presents a danger to the community before deciding to release him prior to trial or pending sentencing. Where evidence exists of a major drug offense, there is a presumption that pretrial release will be denied. The defendant may seek to rebut this presumption.

Sentencing reform

Four general purposes of sentencing have been established. Sentences may consist of probation, a fine, prison term, or any combination. A grading system has been created to rank seriousness of crimes. A seven-member panel will meet within 18 months to write sentencing guidelines which judges would be required to follow unless a judge could state, in writing, aggravating or mitigating factors as a reason for deviation from the guidelines. Parole would be barred for prisoners incarcerated after the effective date of the guidelines.

Forfeiture

The government has authority to seize assets/profits from organized crime and narcotics traffic. Revolving funds will be available to the Justice andTreasury departments for various purposes.

Insanity Defense

The definition of insanity now requires the defendant to prove that he could not appreciate the nature and wrongfulness of his acts due to severe mental disease or defect. The burden of proof for establishing insanity has been shifted to the defendant.

Victim assistance

A Crime Victims Fund has been created, half of which will go to existing state victim compensation programs and the other half will be distributed to state victim assistance programs. This fund will be financed through fines collected from persons convicted of certain federal offenses and any funds in excess of the $100 million dollar maximum fund will be given to the Treasury Department. Each state is to receive $100,000 from the fund, with the remainder distributed among states according to their populations. If there are insufficient funds to guarantee $100,000 to each state, the fund will be distributed equally among the states.

Drug enforcement amendments

Fines and prison terms have been increased significantly for many serious drug offenses. Registration is mandatory for those who manufacture or distribute controlled substances. Registration is also required for anyone dispensing controlled substances. The attorney general is authorized to suspend any registration in emergency situations.

Preventive Detention

The push for bail reform comes from public outrage at defendants' who have committed additional crimes while released on bail. Under present law judges cannot impose conditions of release aimed at protecting community safety. Proponents of preventive detention, like Senator Thurmond, argued that "this is an affront to common sense and has created an obvious, unacceptable danger to innocent citizens."

Senator Kennedy argued the other side in a law review article, that although preventive detention was " a beguiling solution" it was not without its drawbacks:

> based on the experience in the District of Columbia, preventive detention appears to be an ineffective crime-fighting device not only because accurate predictions of a defendant's future criminality are difficult to make, but also because statistics indicate prosecutors are reluctant to use the statute..."

Despite his reservations, Kennedy did not oppose pretrial detention but called for a " balanced approach, a middle-ground between two polar opposites"; as he stated, "The goal of bail reform should not be to jail more defendant's pending trial but, rather, to develop a rational policy for determining who should be released and on what conditions."

"There is a general consensus that bail reform had to occur. The issue becomes whether the remedy of the new law balances with the harm."

There is a general consensus that bail reform had to occur. The issue becomes whether the remedy of the new law balances with the harm. Testimony by Don M. Gottfredson, Dean of Criminal Justice at Rutgers University in New Jersey, before the House Subcommittee on Courts, Civil Liberties and Administration of Justice, cited several local and national studies suggesting that crimes committed while defendants were awaiting trial and sentencing are far fewer than this harsh law would have us believe. In one study conducted by the National Bureau of Standards, it appeared that crimes committed by pretrial releasees were variable. In Washington, D.C., for example, 17% of pretrial releasees were rearrested, in Los Angeles the number was only 5%. The change in philosophy, however, mandates that the 17% in Washington and the 5% in Los Angeles should not be allowed to terrorize and re-terrorize our communities. When communities see those they characterize as criminals back on the street after arrest, their opinion of the criminal justice system is lowered.

Pretrial detention violates an endemic cog in American jurisprudence, that is, an accused is innocent until proven guilty. With the racial and economic composition of large numbers of those engulfed by the system, this provision is suspect, yet the balance of civil liberties and public safety appears, in fact, to be a zero sum analysis, i.e. for one to win, the other must lose.

Uniform Sentencing

Sentencing was also a controversial segment of the Act. This new law marked the first comprehensive sentencing law for the federal system. Introduced by Senator Kennedy in March, 1983, the Sentencing Reform Act carried strong bipartisan support. Subsequently, Senators Thurmond and Laxalt presented an identical bill from President Reagan, who continued to fashion the crime package consistent with his ethos.

General sentencing provisions were nonexistent in the old law. Judges were presented with the option of a maximum term of sentencing, fines, or other various special sentencing statutes. Discrepancy in sentencings for similarly situated defendants was the norm. While one judge may impose a lengthy prison term for purposes of rehabilitation, another may, under similar circumstances, impose a shorter term simply to punish the offender or even sentence a term of probation and a fine. One of the most important theories of sentencing was rehabilitation; some called it "coercive rehabilitation".

The parole system played a significant role in the deterioration of the sentencing system. This tandem operation resulted in judges sentencing defendants while the parole board would release them, generally much sooner than the sentences imposed. Many experts have concluded that the parole system simply does not work. Senator Kennedy referred to the old system as a non-system.

The federal sentencing system was in need of a drastic overhall, and it received just that. Goals for the new law are to create a system which is fair to society, victims, and defendants alike. Under the new law, parole will be phased out over a five-year period with equitable accomodations for those brought within the system prior to the effective date. There will be four general purposes of sentencing: probation, a fine, a prison term, or a combination of the three.

There is now a grading system for crimes according to their seriousness. In addition, judges will be required to follow sentencing guidelines created by a seven-member commission. If the .iudges deviate from these guidelines, they must justify their behavior by citing aggravating or mitigating circumstances. Although the effects of these reforms are yet to be realized. it is conceivable that victims, society, and arguably criminal defendants will benefit from the reform. The disparity in sentencing, where minorities have often suffered, should be corrected by the new uniformity in sentencing. Society will be served in seeing defendants abide by their sentences with no fear of early parole.

Victims may benefit from the new crime bill but the difficulty in balancing the civil liberties of the defendant with the protection due to society was apparent in every portion of this massive act. These competing concerns were partially met by the uniformity of sentencing guidelines, awareness of the barrier money bail often presents to the indigent defendant, and development of special programs to assist victims of crime. The next few years will tell whether the reforms and amendments have met their charge.

Congressional Black Caucus Legislative Briefs

- **CONGRESSMAN MERVYN DYMALLY,** a member of the House Foreign Affairs Committee, called for "a bold effort to ease the economic burden and give the seeds of democracy a chance to sprout once again in South America." Speaking at a Congressional Black Caucus Foundation Issue Forum on "the Impact of U.S. Foreign Policy on the Political Economy of the Third World," Congressman Dymally argued that the U.S. has "learned little from our militaristic past. It is time our foreign policy begin to reflect a devotion to justice and respect for sovereignity and understanding of the conditions that have prompted the people of Central America to struggle to improve their lives."
- **CONGRESSMAN GUS HAWKINS,** the newly selected chair of the House Education and Labor Committee, will begin the 99th Congress by reintroducing his legislation for funding "Effective Schools" programs. The underlying rationale for the bill is that "all children are educable; that their education derives primarily from the school to which they are sent; and that all children who start out not doing well in school get further behind the longer they go to school unless something is done."
- **CONGRESSMAN BILL GRAY,** a member of the House-Senate conference committee on the Export Administration Act, publicly blasted his colleagues for adopting a bill without sanctions against new investment in South Africa (the Gray Admendment). Instead of the Gray Amendment, the conference adopted a proposal by Senator John Heinz which bars new bank loans to the South African government, and which requires U.S. companies to submit reports to the Secretary of State on their compliance with the Sullivan Code.

  Congressman Gray's anger was particularly directed at Representative Don Bonker, chair of the House conferees whom Gray accused of an "unprecedented breach of faith." Gray argued that, "the House Conferees should have insisted on a compromise containing stronger sanctions. We achieved a disappointing 10% of the sanctions overwhelmingly approved by the House of Representatives, at a time when the apartheid regime grows increasingly brutal, repressive and unresponsive to the failed policies of constructive engagement."
- **CONGRESSMAN LOUIS STOKES** recently participated in a "Freedom Run for Soviet Jews." Congressman Stokes has also adopted two "Refuseniks"—Soviet Jews who have been refused permission to emigrate to Israel. The couple, Vladimir and Isolda Tufeld, first applied for exit visas in 1977, but have still not received permission to emigrate.

—Sherille Ismail
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