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The Long Road: Desegregating Higher Education

By Clifton F. Conrad and Paul E. Shrode

In higher education, the challenge of eliminating *de jure* and *de facto* racial segregation—and providing full educational opportunity for all—has proven vexing and tenacious.

Yet, through a strong federal presence, considerable progress has been made. Much remains to be done. But with many states and institutions now committed to the task, there is hope that this country is moving closer to eliminating all remaining vestiges of segregation in higher education and ensuring full educational opportunity for all citizens.

Desegregation in American higher education is usually dated back only a generation ago, to the Supreme Court's momentous 1954 decision in *Brown v. Board of Education*. But desegregation's antithesis — racial segregation — is

anchored in our nation's early history.

Little formal education was provided for Blacks during the colonial and antebellum periods. Most Blacks lived in slavery in the South, where education was considered a threat to the security of the slave labor system, as Richard Chait has observed. Masters maintained that "an educated slave was a dangerous slave," open to ideas of freedom and rebellion from anti-slavery tracts.¹

Laws against teaching slaves date to 1740 in South Carolina, and other southern states passed similar legislation. Northern states, which generally abolished slavery following the Revolutionary War, also excluded Blacks from public schools.

After the Civil War, Southern reluctance to grant Blacks the

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rights and privileges of citizenship extended to higher education. All the southern states took advantage of the first Morrill Act of 1862 to establish land-grant colleges. But only Mississippi, Virginia, and South Carolina made provisions for Blacks to share the benefits.

In fact, public support for Black higher education evolved largely from the need to train teachers for the newly created public schools for Blacks. Missouri established the first Black normal school in 1870, and other states followed suit.²

Indeed, the impetus for “the first extensive effort by the states to provide colleges for [Blacks] not devoted solely to teacher training,” came not from the states but from the federal government.³ When Congress passed the second Morrill Act governing land-grant colleges in 1890, it expressly denied federal funds to colleges “where a distinction of race or color is made in the admission of students.”

Importantly, it added that “the establishment and maintenance of such colleges separately for white and colored students shall be held to be in compliance with the provisions of this act if the funds ... be equitably divided.”⁴

Southern states staunchly maintained that establishing separate colleges for Blacks and whites complied with the second Morrill Act. And in the landmark *Plessy v. Ferguson* ruling of 1896, the Supreme Court agreed that separation of the races was not unconstitutional.

This judicial sanction of “separate but equal” in education was the law of the land until the *Brown* decision in 1954. It was used as tacit approval for state laws that established segregation in higher education and, in turn, led to the founding of many Black colleges. Although the *Plessy* decision did not specifically prohibit Southern states from integrating higher education, none did so.

Kentucky, for example, mandated segregation in all institutions in 1904. When Berea College, which had admitted both whites and Blacks, challenged the law in 1907, the Supreme Court upheld the law under the separate-but-equal doctrine and required Berea to segregate.

Dual systems of higher education were subsequently established throughout the South—ostensibly equal for Blacks and whites but widely viewed as unequal in practice.

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series of challenges to segregation in higher education. These challenges began a gradual shift in the attitude of the federal government.

The first case of import, *Murray v. University of Maryland Law School* (1935), concerned the school's refusal to admit a Black graduate of Amherst College. Murray charged that his constitutional rights had been violated, since Maryland had no law school for Blacks. A state court ordered his admission, a decision upheld by the Maryland court of appeals.⁵

In *Gaines v. University of Missouri* (1938), a 1935 graduate of Lincoln University applied to the University of Missouri law school, Missouri also providing no law school for Blacks. Told to pursue his education in another state (with the university offering to cover his out-of-state tuition), Gaines sued for admission.

A lower court found in favor of the university, but the U.S. Supreme Court found for Gaines, ruling that paying out-of-state tuition was not the equivalent of providing education within the state.⁶

While *Murray* and *Gaines* reinforced state autonomy in higher education, they also held the states responsible for complying

with constitutional requirements. In response, the governors of 14 southern and border states attempted to establish a regional accommodation of Black needs in higher education, each state providing particular programs and thus relieving others of the responsibility.

Despite some expanded opportunities for Blacks, court challenges continued, and the federal courts consistently ruled that each state had to provide for the needs of its residents.

This was reinforced by another law-school admission case, *Sipuel v. Board of Regents of University of Oklahoma*, which reached the U.S. Supreme Court in 1948.

In *Sipuel*, the Court held that "denial of the applicant's admission violated the equal protection clause of the Fourteenth Amendment."⁷ The dissenting opinion by Justice Rutledge did not challenge the doctrine of separate but equal, but it did set the stage for the next step toward desegregation.

"No separate law school could be established elsewhere overnight capable of giving petitioner a legal education equal to that afforded by the ... state university law school," Rutledge wrote.⁸

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In *Sweatt v. Painter*, a Black applicant charged race was the sole basis for his denial of admission to the University of Texas Law School. Since the state had established a law school at a Black university, the Court faced the question of whether a segregated institution could provide an education equal to the white one.

In ruling for *Sweatt*, the court established stringent quantitative criteria for comparing the two classes of institutions under which few Black institutions could compare favorably with their white counterparts.

The Court also called attention to "less tangible" factors: "reputation of faculty, experience of the administration, positions of influence of the alumni, standing in the community, traditions and prestige"—qualities "which make for greatness in a law school."⁹

In the second case, *McLaurin v. Oklahoma State Regents for Higher Education*, McLaurin was admitted to the University of Oklahoma to pursue a doctorate in education subject to racially based restrictions on his use of class-

rooms, the library, and the cafeteria. Did such restrictions deprive him of equal protection? Commenting on the loss of such things as "the opportunity to engage in discussions and exchange views with other students,"¹⁰ the Court ruled in his favor.

McLaurin effectively eliminated differential treatment of students in higher education based on race.

In the following year, federal and state courts used the *Sweatt* and *McLaurin* decisions to order the admission of Blacks at major state universities throughout the South. Other southern states moved independently to desegregate their graduate and professional schools. By 1952, only Alabama, Florida, Georgia, Mississippi, and South Carolina maintained completely segregated universities.

Holding that racially segregated public schools were inherently unequal and a denial of equal protection of the laws, the Supreme Court expressly overturned *Plessy* and the separate-but-equal doctrine in *Brown v. Board of Education* in 1954.¹¹

The Court cited several cases involving higher education in its ruling, but some states raised questions about when colleges

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and universities would have to begin complying, and a number of court cases followed.

Indeed, although *Brown v. Board of Education* had found segregation unconstitutional, discrimination as a whole was not addressed until enactment of the Civil Rights Act of 1964.

Title VI of the act provided that recipients of federal funding could not "deny a service, provide a different service, subject an individual to separate or segregated treatment, restrict the enjoyment of a privilege, determine eligibility or deny participation on the ground of race, color, or national origin."¹²

The federal agency charged with enforcing Title VI was the Office of Civil Rights (OCR), in what was then the Department of Health, Education and Welfare (HEW). To meet its mandate, OCR required that colleges and universities comply with Title VI standards on admissions.

In 1969 HEW found 10 states in violation of Title VI and contended that these states were operating dual systems of higher education. The states were all asked to submit desegregation plans. Five states sent letters of intent or sketchy plans; five ignored the request altogether. HEW made no

formal comment on this state of affairs.¹³

As a consequence, the NAACP Legal Defense Fund filed suit in the U.S. District Court for the District of Columbia in 1970. In *Adams v. Richardson*, it charged HEW with failing to enforce Title VI by continuing to allocate federal funds in violation of the law.

In 1972, Judge John Pratt found in the NAACP Legal Defense Fund's favor and ordered HEW to obtain compliance from the 10 states or refer them to the Justice Department. An appeals court upheld his decision.¹⁴

But the appeals court was also persuaded on another point by an amicus brief filed by the National Association for Equal Opportunity in Higher Education. The brief raised concerns that Pratt's decision would jeopardize the future of predominantly Black institutions. Consequently, the court granted HEW an additional six months to obtain compliance and ordered that desegregation plans be developed in such a way as to protect the predominantly Black institutions within state systems.

HEW reviewed state plans and referred Louisiana to the Justice Department for its failure to submit one.

In 1977, citing minimal progress—and in the face of confu-

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sion about federal expectations and mechanisms for desegregation—Judge Pratt ruled the state plans ineffective and ordered HEW to require new ones.

His ruling was partly based on concerns raised by the NAACP Legal Defense Fund about *de facto* segregation, which it perceived in governance, in the numbers of Black students and faculty, in the program duplication between predominantly Black institutions and proximate predominantly white institutions, in the rate of enhancement of predominantly Black institutions, and in the quality of their facilities and services.¹⁵

HEW subsequently reaffirmed the state duty to eliminate the effects of *de facto* as well as *de jure* segregation and to emphasize a statewide approach in doing so.

State plans were required to address unnecessary program duplication and give consideration to placing new undergraduate, graduate, and professional programs at predominantly Black institutions, consistent with their missions. The states were asked to establish specific goals, with timetables for implementing changes.¹⁶

Under the HEW guidelines, states were also required to plan

to desegregate enrollment—by increasing the number of white students at predominantly Black institutions and Black students at predominantly white ones, by increasing the number of Black students participating in graduate and professional programs, and by easing the transfer of students from two-year to four-year institutions.

HEW also required states to desegregate faculty, staff, and governing boards through systematic, affirmative plans, and to report on their progress.

Clearly, after 1954 a major shift in the federal posture toward segregation had occurred. Based on *Brown*, Title VI, and the *Adams* decision, the federal government had mandated desegregation and an end to racial discrimination in higher education. It had required states to eliminate all remnants of segregation.

In 1978, HEW accepted new plans from Arkansas, Georgia, and Oklahoma and from the North Carolina community college system. And in 1979 OCR (now in the new Department of Education) accepted Virginia's new plan.

In 1980, Judge Pratt ordered HEW to require plans from eight additional states, and in 1981 it accepted plans from Delaware,

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Mississippi, South Carolina, and West Virginia and from the University of North Carolina system, but referred Alabama and Ohio to the Department of Justice. By 1985, the federal government had also accepted plans from Kentucky, Maryland, Pennsylvania, and Texas.

Indeed, all 50 states have made efforts to enhance minority access and achievement in higher education.

In the late 1960s and early 1970s, suggest Richard Richardson and Louis Bender, many states made community colleges the access points for minority populations.

Usually located in urban areas, the community colleges were intended as a pipeline for students who would transfer to four-year colleges and universities, with urban universities often targeted as the receiving institutions.

In the South, "of the fifteen large urban universities ... all but one were created or became a freestanding unit of a state university system."¹⁷ More limited than flagship universities, some of these are predominantly minority campuses serving a regional population.

Minorities are now proportionally represented in two-year insti-

tutions, but substantially underrepresented in four-year ones.¹⁸ And of those attending a four-year college, a disproportionate share attend urban institutions.

State desegregation plans have called for significant numbers of Blacks to be enrolled at predominantly white institutions and whites at predominantly Black ones. The 1977 Arkansas plan, for instance, called for a 16-percent enrollment of Blacks at the state's predominantly white institutions by 1982-83. But by 1987, Black enrollment accounted for only 10 percent, a percentage slightly less than at the plan's inception.¹⁹

Indeed, some states have experienced actual decreases in Black enrollment, while others have seen only modest increases. In Georgia, for instance, a state where 26 percent of the population is Black, enrollment of Blacks rose from 10.5 to only 10.9 percent from 1978 to 1985.²⁰

Some predominantly Black institutions have experienced modest increases in the past few years, but most now have less than 5 percent "other-race" students. Encouraging white students to attend predominantly Black institutions remains critical if desegregation is to be realized.

Need-based student financial aid theoretically should enhance

The modest increase of Black faculty in predominantly white institutions may have been inflated. In Adams states, they number only 1.8 percent.

minority enrollment, Richardson and Bender comment in analyzing the slow progress in minority access to higher education. But they note that many scholarship programs are tied to standardized tests on which minority students do relatively poorly.

They also cite the lack of cooperation between many two-year and four-year institutions as a barrier to smooth student transfer between institutions. Finally, they note the relative absence of Black role models among faculty and administrators in many institutions.

State desegregation plans have called for an increase in Black faculty in predominantly white institutions, as well as a strengthening of the faculty at predominantly Black ones. Targets have usually been tied to the percentage of credentialed Black faculty in the region. But, despite progress, results have generally fallen short of goals.

In fact, the modest successes reported may have been inflated. In a survey of 1,300 Black faculty in nine of the Adams states, Rodney Dennis and Joe Silver found that "administrators with faculty rank, teaching assistants, visiting professors, and part-time faculty were reported along with full-

time teaching faculty."²¹ Though the institutions had reported 2.5 percent Black faculty, the actual number of teaching faculty, they found, was 1.8 percent.

Program duplication is difficult to examine, not least because of differences over what constitutes duplication. The Arkansas plan, for example, stated that no duplication existed, and South Carolina also denied significant duplication, arguing that some duplication was necessary to provide "enhanced educational opportunities."²²

But North Carolina admitted that programs were duplicated in all its predominantly Black institutions, since they had been established specifically for that purpose when segregation was legal.

Comparing predominantly Black institutions with predominantly white ones serving the same regions, Robert Dentler, D. Catherine Baltzell, and Daniel Sullivan found not only that programs at the Black institutions significantly duplicated those at the white ones, but that their curricula were relatively underdeveloped. This was especially true where nearby predominantly white institutions had experienced significant growth.²³

In Mississippi, Clifton Conrad found that more than 60 percent

The states have moved from resisting desegregation to something that approaches advocacy, some continuing to implement plans even after expiration.

of the baccalaureate programs in Mississippi's predominantly Black institutions unnecessarily duplicated those in the predominantly white ones, which also offered more degree programs, a greater range of them, and higher degree levels as well.²⁴

In 1987, despite some positive results, Judge Pratt expressed frustration with the slow progress toward desegregation and dismissed *Adams* in an attempt to prod both the states and the federal government into rethinking the issues.

His decision followed an October, 1987, appeals court decision overturning a district judge's ruling that Alabama's colleges and universities were illegally segregated. In doing so, the ruling had cited *Grove City v. Bell* (1984), in which the Supreme Court had found that Title IX of the Civil Rights Act of 1964 applied only to programs or departments receiving federal support and not to the whole institution. Presumably, the same could be argued about Title VI.

Over the last four decades, the states have moved from resisting desegregation to something that approaches advocacy. Significantly, some states have continued to implement and update desegrega-

tion plans even after their expiration.

Several recent developments help frame an agenda for the future. The 1988 Civil Rights Restoration Act reasserted the principles of Title VI, rendering *Grove City* ineffective. More recently, a panel of judges for the U.S. Court of Appeals for the District of Columbia has ruled that the civil rights organizations that brought suit in *Adams* could continue to pursue legal action, reviving the case and renewing efforts to monitor desegregation.²⁵

Additionally, virtually all states are developing programs to foster greater minority involvement in higher education. New Jersey, for example, has reversed a sharp decline in Black enrollment with an innovative program of grants connected to affirmative programs.²⁶

And with the help of the Ford Foundation, the State Higher Education Executive Officers (SHEEO) recently made one-year grants available to state boards of higher education for programs to improve testing and tracking minority progress. The grants will also seek to ease the transfer of minorities from two-year to four-year institutions and improve admissions and funding policies to attract and retain minority stu-

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dents.²⁷ Such initiatives reflect a strong commitment to equal opportunity and suggest some directions for future efforts.

With the states more actively promoting equal opportunity and desegregation, they are now assuming an increasingly central role. State governments can best promote desegregation by supporting their higher education governing and coordinating boards. Indeed, state boards of higher education and multicampus governing boards must assume leadership in promoting programs and initiatives to achieve the goals outlined a dozen years ago by the NAACP Legal Defense Fund and HEW.

In concert with statewide initiatives, individual colleges and universities must continue to renew their commitments to ensuring equal opportunity and eliminating any vestiges of segregation. Their strategies may include efforts to heavily recruit minorities or to establish admissions and aid criteria that do not rely on standardized test scores.

Colleges and universities also ought to be working in the public schools to encourage a greater interest in college among minority

students and establish support services that make them more successful when they get there. And colleges must commit to affirmative plans for hiring and retaining other-race faculty, staff, and administrators.

Federal participation in desegregating higher education is likely to continue to be important, in maintaining reporting requirements and following through on Title VI violations, for instance.

But with state governments assuming an increasing role in desegregation, the federal government should now become more supportive, and it should develop a more positive working relationship with the states.

Washington should provide resources to programs that get results and serve as a clearinghouse for them as well. It should provide financial support, particularly aid programs that target qualified minority candidates. It should encourage initiatives such as those being sponsored by SHEEO and the Ford Foundation.

All this in place, let us realize as quickly as possible our national agenda of eliminating the vestiges of segregation and ensuring full higher education opportunity for all citizens. ■

Notes

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³ *Ibid.*, 6.

⁴ Jean L. Preer, *Lawyers v. Educators: Black Colleges and Desegregation in Public Higher Education*, Contributions in American Studies, no. 61 (Westport, Conn.: Greenwood Press, 1982), 8.

⁵ Leonard L. Haynes, III., *A Critical Examination of the Adams Case: A Source Book* (Washington, D.C.: Institute for Services to Education, 1978), 1-5.

⁶ *Ibid.*, 1-6.

⁷ Felix V. Baxter, "The Affirmative Duty to Designate Institutions of Higher Education—Defining the Role of the Traditionally Black College," *Journal of Law and Education* 11:1 (1982), 4.

⁸ U.S. Commission on Civil Rights, *Equal Protection*, 25.

⁹ Baxter, "Affirmative Duty," 5.

¹⁰ *Ibid.*, 6.

¹¹ U.S. Commission on Civil Rights, *Equal Protection*, 41.

¹² Preer, *Lawyers v. Educators*, 168.

¹³ Baxter, "Affirmative Duty," 19.

¹⁴ Haynes, *A Critical Examination*, 11-16.

¹⁵ *Ibid.*, F1-F102.

¹⁶ *Ibid.*, K1-K26.

¹⁷ Richard C. Richardson, Jr., and Louis W. Bender, *Fostering Minority Access and Achievement in Higher Education* (San Francisco: Jossey-Bass, Inc., 1987), 4.

¹⁸ *Ibid.*, 2.

¹⁹ Scott Jaschik, "U.S. Review of Effort to Integrate Colleges Likely to Spur Fight," *The Chronicle of Higher Education*, 27 March 1987, 1.

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²⁴ Clifton F. Conrad, *Mississippi Curriculum Study: A Report for the U.S. Department of Justice* (Washington, D.C.: United States Department of Justice, 1987).

²⁵ Scott Jaschik, "Lawsuit Forcing U.S. to Monitor Colleges on Race is Revised," *The Chronicle of Higher Education*, 19 July 1989, 1.

²⁶ "Just What Does New Jersey Do?" *Black Issues in Higher Education*, 8 December 1988, 16.

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