Public black colleges and desegregation in the United States: a continuing dilemma

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1. Introduction

Prior to the Civil War of the United States of America there were few mainstream educational opportunities for African Americans with the exception of historically black institutions established by abolitionists for non-slaves. With the post-war shift to industrialization, America recognised the need to educate its former slaves and their progeny. However, after decades of significant progress, the races still remained ‘separate’ and their education ‘unequal’.

In 1954, the United States Supreme Court’s ruling in *Brown v. Board of Education Topeka* (347 U.S. 483) overturned the prevailing doctrine of separate but equal introduced by *Plessy v. Ferguson* (163 U.S. 537) 58 years before. By the time *Brown* was decided, many states had created dual collegiate structures of public education, most of which operated exclusively for Caucasians in one system and African Americans in the other. Although *Brown* focused the United States on desegregation in primary and secondary public education, the issue of disestablishing dual systems of public higher education had yet to come to the forefront.

The mandate of desegregation reached postsecondary education 2 years later. In *Florida ex rel. Hawkins v. Board of Control* (350 U.S. 413 [1956]), the Supreme Court applied the *Brown* principle to higher education for the first time. The *Hawkins* ruling was ultimately ineffective as a result of failure to resolve the issue of remedy. Beyond the myopic response regarding remedy, both federal law and the courts remained silent on officially mandating the dismantlement of dual collegiate structures.

The pressure to dismantle dual systems of higher education was not extended to higher education until the passage of the Civil Rights Act of 1964. Title VI of this Act stated that:

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No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (Pub. L. No. 88-352, 78 Stat. 241).

Although this legislation did not center on higher education desegregation, its administrative implementation guidelines declared that “in administering a program regarding which the recipient has previously discriminated . . . the recipient must take affirmative action to overcome the effects of prior discrimination” (34 C.F.R. 100.3 (6)(i)). It was this mandate that gave the federal government oversight of the desegregation of public higher education. The granting of authority was not difficult. It was the interpretation and implementation of the law that would lead to decades of litigation.

Despite Title VI, nineteen states continued to operate dual systems of higher education—Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia. From 1969 to the mid-70s, the Office of Civil Rights in the Department of Health, Education, and Welfare\(^1\) (HEW) contacted ten of these states to notify them that they were in violation of Title VI (U.S. Department of Education, 1991). This compliance initiative was fueled when the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund filed suit against HEW in 1970. This lawsuit, Adams\(^2\) v. Richardson (351 F.2d 636 [D.C. Cir. 1972]), asserted that ten states still operated segregated and discriminatory higher education systems; eventually, the suit included all 19 of the southern and border states. However, the Adams litigation died in 1990 with the Women’s Equity Action League\(^3\) v. Cavazos (906 F.2d 742 [D.C. Cir. 1990]) ruling that plaintiffs lacked a private right of action against a federal agency.

As a result of the death of Adams, private plaintiff litigation ensued in four states—Alabama, Louisiana, Mississippi and Tennessee. Recently the Supreme Court and federal courts have proffered higher education desegregation decisions in Mississippi’s United States\(^4\) v. Fordice (505 U.S. 717, 112 S.Ct. 2727 [1992]), Knight v. Alabama (787 F.Supp. 1115 [D.D. Ala. 1991]), United States v. Louisiana (718 F.Supp. 525 [E.D. La. 1989]), and Tennessee’s Geier v. Alexander (593 F.Supp. 1293 [M.D. Tenn. 1984]). While the American legal system has spent the last 40 years tackling the issues of desegregation in the elementary and secondary schools, the strategies necessary to effect change in colleges and universities have yet to be defined.

2. Collegiate desegregation issues

Few areas of the law are as perplexing and confusing as the case law which surrounds collegiate desegregation. The differing perceptions of the courts, government admin-

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\(^1\)The Department of Health, Education, and Welfare was later divided into the Department of Education and that of Health and Human Services.