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J. Clay Smith

Lisa C. Wilson

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BROWN ON WHITE COLLEGE CAMPUSES: FORTY YEARS OF *BROWN V BOARD OF EDUCATION*

J. CLAY SMITH, JR.*
LISA C. WILSON**

Education has always been the great hope for both individual and society. In the American Creed it has been the main ground upon which "equality of opportunity for the individual" and "free outlet for ability" could be based. Education has also been considered as the best way—and the way most compatible with American individualistic ideals—to improve society.¹

This commentary by Gunnar Myrdal is just as appropriate now, forty years after the Supreme Court rendered its decision in *Brown v. Board of Education*,² as it was when he authored *An American Dilemma: The Negro Problem and Modern Democracy*, which, in 1944, provided an assessment and overview of the state of Black America.³ The fortieth anniversary of *Brown*

* Professor of Law, Howard University.

** J.D., University of Virginia School of Law, 1988; Member, District of Columbia and Virginia bars.

1. GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 882 (20th Ann. ed. 1962) (footnote omitted).

2. 347 U.S. 483 (1954); see Mary-Christine Phillip, *Brown at 40*, *BLACK ISSUES IN HIGHER EDUC.*, Jan. 13, 1994, at 9.

3. The importance of education as essential to the hopes of black people in America was first manifested in American courts by a black lawyer named Robert Morris, Sr. In 1848, Morris, alone, filed, tried, and lost the first case ever filed by a black lawyer in American law to desegregate the public school system in Boston. J. Clay Smith, Jr., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944*, at 97 n.27 (1993) (discussing *Roberts v. City of Boston*, No. 976 C.P. Suffolk County, Mass. Oct. 1848). Gaining access to education—a fundamental promise of the American Dream—has been an uphill struggle since Morris filed his lawsuit. Blacks have made "an extraordinary effort during most of their history in the United States to obtain [an education]." Kenneth S. Tallett, *Universal Education, Blacks and Democracy: The Expansion and Contraction of Educational Opportunities*, in *RACE: TWENTIETH CENTURY DILEMMAS—TWENTY-FIRST CENTURY PROGNOSSES* 49 (Winston A. Van Horne & Thomas V. Tonnesen eds., 1989). Despite the claim that black people were to get the crumbs of the educational system in some southern states and were to be excluded from the riches of educational systems provided for whites, they rejected

causes us to pause and take stock in just how far this nation has come in realizing the sentiments and ideals of *Brown*, particularly in the realm of higher education, where the attitudes and understandings of young adults are most profoundly shaped.⁴ Indeed, the question that we must face and assess during this fortieth anniversary is that, although minority students have greater access to institutions of higher learning, is the quality of that education fulfilling the ideals of *Brown*?⁵ We also must assess whether impediments exist that limit the access to—and achievement of—the quality higher education embodied in the ideals of *Brown*.

Part I of this Essay will discuss *Brown v. Board of Education* and the ideals expressed in the Supreme Court's unanimous opinion as to the aspiration of the Court and of society for our nation's youth to have free and equal access to education. Part II will discuss the impact of integration on college campuses. This discussion will consider factors that demonstrate the black stu-

the lie that they were intellectually inferior. Compare G. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND* 298 (1971) (quoting THOMAS P. BAILEY, *RACE ORTHODOXY IN THE SOUTH* 93 (1914)) and JEROME DOWD, *THE NEGRO IN AMERICAN LIFE* 149-150 (Student's ed. 1926) with Thomas W. Talley, *What is the Negro Teacher Doing in the Matter of Uplifting His Race?* in *TWENTIETH CENTURY NEGRO LITERATURE*; OR A CYCLOPEDIA OF THOUGHT ON THE VITAL TOPICS RELATING TO THE AMERICAN NEGRO 338 (D.W. Culp ed., 1902) and HENRY A. BULLOCK, *A HISTORY OF NEGRO EDUCATION IN THE SOUTH: FROM 1619 TO THE PRESENT* 157-60 (1967). Black Americans are not likely to forget the statement of Senator James K. Vardaman of Mississippi that "education is ruining our Negroes. They're demanding equality." Benno C. Schmidt, *Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part I: The Heyday of Jim Crow*, 82 COLUM. L. REV. 444, 476-77 (1982) (citing A.B. HART, *THE SOUTHERN SOUTH* 248 (1910)).

4. But see Catherine S. Manegold, *Fewer Men Earn Doctorates, Particularly Among Blacks*, N.Y. TIMES, Jan. 18, 1994, at A14 (reporting that in 1992, only 386 black men received doctorates; 565 black women received doctorates, one more than was received in 1982. Overall, black recipients of these degrees "dropped to 5 percent from 6.4 percent."); see also J. Clay Smith, Jr., *Blacks and Education: "Don't Shout Too Soon"—An Annotated Bibliography*, 7 HARV. BLACKLETTER J. 99, 100, 106 (1990).

5. See Rhoda O. Covington, *Minority Populations at Predominantly White Campuses*, BLACK ISSUES IN HIGHER EDUC., Sept. 9, 1993, at 39 (reporting that graduating black students from white institutions is an elusive concept). Covington states: "The dirty secret is that most African American freshmen don't have the faintest inkling of what they may encounter academically or psycho-socially at the mostly white institution of their choice." *Id.*

dent experience on predominantly white college campuses such as increasing instances of racially motivated violence, student protests, affirmative action, black attendance levels at those colleges, diversification of curriculum, and minority faculty hiring efforts.

I. THE IDEALS OF *BROWN*

Brown was decided during a period in American history in which blacks and whites were separated by city ordinances and state laws that prohibited the races from using the same public facilities such as bathrooms, water fountains, and entrances. These state-sanctioned policies emanated from the Court's prior decision in *Plessy v. Ferguson*,⁶ wherein the Court ruled that equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities are separate.⁷

In *Brown*, the Court instructed us as to the effect that public education has on the development of our nation's youth. Chief Justice Earl Warren wrote that "education is perhaps the most important function of state and local governments."⁸ He continued, stating:

It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.⁹

Brown overruled *Plessy v. Ferguson* and outlawed state-enforced segregation in public schools, ruling that "separate but equal" . . . [is] inherently unequal."¹⁰ The *Brown* decision

6. 163 U.S. 537 (1896).

7. *Id.*

8. *Brown*, 347 U.S. at 493.

9. *Id.*

10. *Id.* at 495.

made clear the urgency for dismantling segregation in public schools by ordering school districts to desegregate their educational systems "with all deliberate speed."¹¹

Even the United States, in its brief as *amicus curiae*, recognized the national significance of eliminating segregation in education. The United States expressed its obligation "to see that constitutional guaranties of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union."¹² Moreover, the United States emphasized that state-sanctioned discrimination, in any form, can affect the country's relations with other nations. In this context, the United States argued that "[t]he existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries. Racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith."¹³

The benefits of equal access to quality education have been equally recognized in the context of higher education.¹⁴ More recently, the Supreme Court applied the *Brown* theory in the context of the public higher education system operated by the State of Mississippi.¹⁵ Although *de facto* segregation had been eliminated in 1962 with the admission of a black student, James Meredith, to the all-white University of Mississippi,¹⁶ the Court found that the vestiges of the state's segregated system remained. The Court in *Fordice* opined that the state's obligations

11. *Brown v. Board of Educ.*, 349 U.S. 294, 300 (1955) (*Brown II*); see also *Green v. New Kent County Sch. Bd.*, 391 U.S. 430 (1968) (invalidating "freedom of choice" plan as inadequate compliance with responsibility to admit students to public schools on nonracial basis); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (upholding authority of District Court to use mathematical ratios to pair and group noncontiguous school zones and to order system of bus transportation as means of implementing desegregation).

12. Brief for the United States at 2, *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (footnote omitted).

13. *Id.* at 6.

14. *Sweatt v. Painter*, 339 U.S. 629 (1950) (holding segregated schools impermissible); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950) (same); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938) (same).

15. *United States v. Fordice*, 112 S. Ct. 2727 (1992).

16. *Meredith v. Fair*, 306 F.2d 374 (5th Cir.), *cert. denied*, 371 U.S. 828 (1962).

under the Constitution did not end upon the elimination of its official segregative policies. Rather, the state's remedial obligations are not satisfied "until it eradicates policies and practices traceable to its prior *de jure* dual system that continue to foster segregation."¹⁷

II. THE IMPACT OF INTEGRATION ON PREDOMINANTLY WHITE COLLEGE CAMPUSES

More than ever before, minority students are pursuing undergraduate and graduate degrees at historically white colleges and universities, both public and private. In looking at the bare principle of integration, the ideals of *Brown*, which call for the elimination of statutory segregation, apparently have been met. However, when looking closely at what is occurring, and recurring, on historically white campuses, it appears that the vestiges of segregation continue. Black students at historically white campuses continue to be the victims of racist incidents, and the nature of these occurrences invariably tarnish the quality of their academic experience.

A. *Racially Motivated Violent Conduct*

At Penn State University, young black female students, pledges of a historically black women's sorority, were victims of a racial attack.¹⁸ The same weekend of this attack, racially derogatory flyers were distributed throughout the campus.¹⁹ The University of Michigan has also experienced a tense racial climate. In 1987, a flier was circulated on campus "declaring open hunting season of blacks."²⁰ Another year, a student broadcast racial jokes on the student-operated radio station.²¹ These incidents triggered significant tensions between the races on that campus. In 1988, at Stanford University, the word "Nigger" was

17. *Fordice*, 112 S. Ct. at 2735.

18. Olive Vassell, *Delta Pledges Are Victims of Racial Attack at Penn State U.*, WASH. AFRO AM., Feb. 25, 1989, at 1.

19. *Id.*

20. Isabel Wilkerson, *U. Michigan Fights the Taint of Racial Trouble*, N.Y. TIMES, Jan. 15, 1990, at A12.

21. *Id.*

scrawled on a black fraternity house.²² Also at Stanford, a student drew a symphony poster of Beethoven into a black face caricature and posted it near a black student's room.²³

At Dartmouth College, harassing letters were sent to black, gay, and female students and racially derogatory and sexist graffiti appeared in dorm rooms.²⁴ Similar hate mail was sent to black students at Yale.²⁵ Racially derogatory letters were also circulated to black female students at Smith College.²⁶ Racial tensions at Dartmouth were furthered when a black professor reported being harassed by white students who had refused to leave the classroom after being asked by the professor to do so.²⁷

In 1988, students at the University of Massachusetts at Amherst took over a campus building to protest racial incidents that had occurred against black students at the school. There, two black male students reported being accosted by six white men who were angry because a white woman was with them. In another incident, black students accused campus police of racism for randomly selecting seven black students for a line-up after a white student reported that she had been harassed by a black man.²⁸

In a highly publicized case out of the University of Pennsylvania, four black women who were celebrating the founding of their sorority outside of a dormitory room were the targets of

22. *Racial Incidents Reported at Three U.S. Colleges*, JET, Nov. 14, 1988, at 28.

23. Felicity Barringer, *Campus Battle Pits Freedom of Speech Against Racial Slury*, N.Y. TIMES, Apr. 25, 1989, at A1.

24. *Harassing Letters Upset Students at Dartmouth*, N.Y. TIMES, Oct. 19, 1988, at B9.

25. *Yale Investigates Hate Mail Sent to Black Students*, N.Y. TIMES, Sept. 23, 1990, at 37.

26. A black professor at Smith resigned when the school failed to adequately respond to the racial incidents. *Smith College Prof. Quits After Flap over Racism*, JET, Jan. 18, 1988, at 10.

27. *Dartmouth Rebels Fight College Today in Superior Court*, WASH. TIMES, Dec. 19, 1988, at A3. The students claimed that the black professor's class was "one of [the college's] most academically deficient" on campus. The students were ultimately suspended.

28. See Charles S. Farrell, *Students Protesting Racial Bias at U. of Massachusetts End Occupation of Campus Building After 5 Days*, CHRON. OF HIGHER EDUC., Feb. 24, 1988, at A41.

racial slurs when white students allegedly yelled at them, calling them "nigger" and "fat asses."²⁹ Only one student admitted to yelling at the women, but stated that he yelled "Shut up you water buffalo. Go back to the zoo where you belong."³⁰

1. *Problems with Campus Police*

Racial tensions on white college campuses are not just the result of tensions between black and white students. On numerous campuses black students have reported conduct of racial harassment by campus police against black students. At Arizona State University, two black students reported that campus police handcuffed and bullied them while a crowd of white students yelled racial slurs.³¹ This incident touched off three days of protests.³² In 1992, administrators at Arizona State required campus police officers to attend racial sensitivity classes.³³ This requirement was in response to further complaints by black students that campus police officers harassed them or rejected their requests for help.³⁴ Other complaints included refusing to drive a black student home from a campus football game, refusing to escort students home after dark, and routinely stopping black students on campus to check what they were doing and whether they belonged there.³⁵ In 1993, at the University of Rhode Is-

29. Dale Russakoff, *At Penn, Can Frank Talk Make Racial Tension Walk?* WASH. POST, Nov. 19, 1993, at A2 (reporting that one student at the University of Pennsylvania said that "she often had been called 'nigger' by people, presumably students, yelling from high-rise dormitories out of her sight").

30. Michael deCourcy Hinds, *Blacks at Penn Drop a Charge of Harassment*, N.Y. TIMES, May 25, 1993, at A10; Michael deCourcy Hinds, *A Campus Case: Speech or Harassment?*, N.Y. TIMES, May 15, 1993, at 6; Dale Russakoff & Mary Jordan, *At Penn, the Word Divides as Easily as the Sword*, WASH. POST, May 15, 1993, at A1; see also Steve France, *Hate Goes to College*, A.B.A. J., July 1990, at 44; Michael deCourcy Hinds, *No Penalties for Black Students Who Took Newspapers at Penn*, N.Y. TIMES, Sept. 16, 1993, at B9; Mary Jordan, *Students Who Set Off Penn Newspaper Censorship Uproar Won't Be Punished*, WASH. POST, Sept. 15, 1993, at A12; *Penn to Alter Harassment Rules to Balance Free Speech and Privacy*, N.Y. TIMES, Nov. 17, 1993, at A25.

31. *FBI Examines Actions of Police at Arizona State*, N.Y. TIMES, May 2, 1989, at D26.

32. *Id.*

33. *Campus Police Attend Classes on Sensitivity*, N.Y. TIMES, Feb. 16, 1992, at 55.

34. *Id.*

35. *Id.*

land, black students complained that they were pulled over in their cars by campus police for no apparent reason.³⁶ At the State University of New York, College at Oneonta, administration officials gave police the names of 125 black male students (presumably possible suspects) after an elderly woman was assaulted by a black male.³⁷

Although the number of racial incidents against blacks on white campuses has continued to climb, it appears that objection to such incidents by national groups against the broad range of racially motivated conduct has been minimal.

2. *The Greek System*

The antics of predominantly white fraternities on college campuses have been cause for stirring racial tension. At the University of Pennsylvania, a white fraternity hired two black strippers to perform before an audience of young white males that shouted racial epithets at the women.³⁸ The university administration suspended the fraternity for one and one-half years as a result of the incident.³⁹ At the University of Wisconsin at Madison, a predominantly white fraternity was suspended for sponsoring a mock slave auction where the pledges wore black face and "afro" wigs.⁴⁰ The University of Wisconsin was also the scene of a Fiji Island party and a Harlem party, both of which spawned racial tensions.⁴¹ More recently, at the University of Texas, administrators banned a white fraternity that sold tee shirts on campus which showed a "Sambo" character.⁴² Another

36. Michele N-K Collison, *Black Students Complain of Abuse by Campus Police*, CHRON. OF HIGHER EDUC., Apr. 14, 1993, A35.

37. Diana J. Schemo, *College Town in Uproar Over 'Black List' Search*, N.Y. TIMES, Sept. 27, 1992, at 33; *College and Police Apologize for Using Black Students List*, N.Y. TIMES, Sept. 12, 1992, at 26; *SUNY Chief Blasts Staff for Aiding Search of Black Students*, B. SUN GLOBE, Sept. 13, 1992, at 17; *College Official Who Released List of Black Students is Demoted*, N.Y. TIMES, Sept. 18, 1992, at B6.

38. *Penn Fraternity Suspended*, N.Y. TIMES, Mar. 5, 1988, at A7.

39. *Id.*

40. *A Fraternity is Suspended After a Mock Slave Auction*, N.Y. TIMES, Oct. 25, 1988, at A24.

41. *Racist Acts Inspire a Call for Control over Fraternities*, N.Y. TIMES, May 21, 1989, at 52.

42. *U. of Texas Bans Frats in Racist Incidents for Year*, JET, May 21, 1990, at 36.

white fraternity was banned for painting racial slurs on an old car.⁴³ At George Mason University, a white fraternity held an "ugly woman" contest in which a white male appeared as a black woman.⁴⁴ The student sued after being punished by university officials. A federal district court later ordered GMU not to punish the student, ruling that he was acting within his First Amendment rights.⁴⁵ Other racially motivated incidents at George Mason University include spray painting doors of rooms where minority students live and spraying shaving cream on cars of minority students.⁴⁶ At a basketball game, an Elvis impersonator sang "Dixie" prompting some students to walk out.⁴⁷

At the University of Minnesota, white students formed a "White Student Union." A fight escalated between thirty white members of the union and protesters, which was provoked while the union's founder was giving an on-campus radio interview.⁴⁸ The founder of the union publicly supported racial separatism. Tear gas was used in the fight, and three people were injured.⁴⁹ In 1990, another white student union was formed at the University of Florida at Gainesville to protest affirmative action and other so-called preferential treatment. University administrators made the group eligible for student government financing.⁵⁰

B. Black Student Attendance at White Colleges

These incidents are just a few examples of racially motivated conduct directed at black and other minority students of predominantly white institutions. According to a recent study by the Institute Against Prejudice and Violence, reports of campus

43. *Id.*

44. Robert F. Howe, *Sigma Chi Asks Court To Reinstate its Privileges at George Mason*, WASH. POST, July 27, 1991, at B8.

45. Peter Baker, *Judge Lifts Penalty for GMU Fraternity*, WASH. POST, Aug. 28, 1991, at B1.

46. DeNeen L. Brown, *Black Students Protest Alleged Racial Incidents at GMU Rally*, WASH. POST, Feb. 11, 1992, at B1.

47. *Id.*

48. *Conflict Escalates over Organization Devoted to Racism*, N.Y. TIMES, Oct. 20, 1991, at 38.

49. *Id.*

50. *An Organization for White Rights Prompts Protests*, N.Y. TIMES, Apr. 8, 1990, at 41.

harassment have increased 400% since 1984.⁵¹ Despite these incidents, as of 1990, eighty percent of the nation's one million black college students were enrolled at predominantly white universities.⁵² However, as more of these incidents become publicized, an increasing number of parents and students are turning to historically black colleges and universities.⁵³ While these institutions have historically had to struggle for funding and facilities,⁵⁴ they have generally been spared the extent of the racial turmoil that has proliferated on white college campuses.⁵⁵

Other factors are also affecting black students' pursuit of higher education. Statistics from the early and mid-1980s showed that black enrollment in college, overall, was stagnating.⁵⁶ In 1987 the American Council on Education reported that "participation by Black[s] and Hispanics in college

51. David Shenk, *Young Hate*, CV MAG., Feb. 1990, at 34, 36 (discussing study by the Institute Against Prejudice and Violence).

52. Isabel Wilkerson, *Racial Harassment Altering Blacks' Choices on Colleges*, N.Y. TIMES, May 9, 1990, at A1.

53. *Enrollment Up at Black Universities and Colleges*, JET, Apr. 26, 1993, at 22.

54. The struggle of black colleges continues. Christopher D. King, *Saving Black Colleges*, EMERGE, Mar. 1994, at 9; see also Peter Applebome, *Colleges's Fight To Survive Mirrors Plight of Many Black Campuses*, N.Y. TIMES, Jan. 2, 1993, at 1 (discussing hardships of private black colleges); Tom Watson, *Black University Fights Mississippi Merger Plan*, USA TODAY, Oct. 29, 1992, at 12A (reporting plans to shut down a black college in Mississippi).

55. See Wilkerson, *supra* note 52, at B10. Yet, students at Historically Black Colleges have not been completely immune from racial affronts. *Professor Not Rehured Due to Racial Comment*, JOHNS HOPKINS NEWSL., Feb. 4, 1994, at A6 (reporting that a non-black professor at Florida A&M University made a comment about "nigger mentality" because he felt compelled to make a strong statement to impact his students"); see also Denise Hawkins, *Race Rulings a Reality at Black Colleges*, 10 BLACK ISSUES IN HIGHER EDUC., Aug. 26, 1993, at 15.

56. Robyn-Denise Yourse, *College Enrollment Drops Among Blacks and Hispanics*, WASH. AFRO AM., Nov. 3, 1987, at 1. At a conference called "The Decline of Black Enrollment in Higher Education: A National Dilemma," conferees reported a decline in black enrollment in college. Mike Isaacson, *Solutions to Declining Black Enrollment Sought*, ST. LOUIS AM., Mar. 3, 1988, at 1. Between 1970 and 1980, black student participation rose from 550,000 to 1.1 million. By 1984, the number had declined to 994,000. Although comprising 13% of college-age youth, blacks represented only 9.5% of all college undergraduates. *Id.*, see also Barbara Vobejda, *Share of Blacks, Hispanics Entering College Continues Decline*, WASH. POST, Oct. 23, 1987, at A15; *Survey Shows Blacks Lag in Finishing Colleges*, N.Y. TIMES, Dec. 3, 1987, at A23.

continue[d] to decline despite the growing numbers of these minorities graduating from high school."⁵⁷ Between 1976 and 1985, the percentage of eighteen to twenty-four year olds attending college declined by more than seven percent, from thirty-four percent to twenty-six percent.⁵⁸ Some argue that the decline, at least on white campuses, is motivated by a perception that blacks are not welcome on predominantly white campuses.⁵⁹ However, other factors contribute to static black enrollment including rising tuition,⁶⁰ new admissions standards,⁶¹ reduced

57. *ACE Cites Crisis in Minorities' College Participation*, HIGHER EDUC. & NAT'L AFF. NEWSL. OF THE AM. COUNCIL ON EDUC., Nov. 2, 1987, at 1.

58. *Id.*, see also SMITH, *supra* note 4, at 100 n.11.

59. Edward B. Fiske, *Enrollment of Minorities in Colleges Stagnating*, N.Y. TIMES, Apr. 19, 1987, at A1. Recently,

Gov. George Allen replaced the only black member of the University of Virginia governing board with a white man. The first black member of the U-Va. board was appointed by Republican Gov. John N. Dalton in 1978. Every governor since has ensured that a black person held at least one of the 16 seats.

Jeff Leeds & Peter Baker, *Allen's Choices Make U-Va. Board All White Again*, WASH. POST, Feb. 26, 1994, at B1. After this article appeared, Governor Allen appointed a black woman to the Board. *Allen Chooses Black Educator for U-Va. Board*, WASH. POST, Mar. 21, 1994, at D6.

60. One commentator reports:

In an address before the Old Dominion Bar Association in 1979, Dr. J. Clay Smith, Jr. postulated that "one of the greatest deterrents to increased ranks of blacks as lawyers in the work force may be the growing cost of tuition in state and private colleges," accompanied by fewer available loan and scholarship funds.

GERALDINE R. SEGAL, *BLACKS IN THE LAW: PHILADELPHIA AND THE NATION* 9 (1983). The need for scholarships for needy and bright black students continues to be a challenge and challenged. Lawrence Feinberg, *College Costs Reach as High as \$75,000*, WASH. POST, Aug. 7, 1987, at A1. However, scholarships funded by public universities for black students are under a direct constitutional threat. In *Podberesky v. Kirwan*, No. 93-2527, slip op. (4th Cir. Oct. 27, 1994), the court of appeals recently ruled that the University of Maryland's Banneker scholarship program, a merit-based program established by the University to provide scholarship funds for black students, did not satisfy constitutional standards because (1) there was insufficient evidence of past discrimination to justify the program, and (2) the program was not narrowly tailored to serve its stated objectives. Robert E. Pierre, *Black Scholarships Disallowed*, WASH. POST, Oct. 28, 1994, at A1; see also Sabra Chartrand, *Administration Backs Race-Based Scholarships*, N.Y. TIMES, Oct. 27, 1993, at B8; Lloyd N. Cutler, *A Test for Minority Scholarships*, WASH. POST, Feb. 8, 1991, at A19 (discussing the legality of scholarships limited to minorities); Catherine S. Manegold, *U.S. Study Bolsters Case for Minority Scholarships*, N.Y. TIMES, Jan. 15, 1994, at A8.

61. *Black Univ. Officials in Mississippi Disturbed by States's New Admissions Pol-*

social and political pressure for affirmative action, and a lack of aggressive recruiting.⁶² Increasingly, black students have been choosing proprietary schools and community colleges.⁶³ This fact is particularly troubling because more students are graduating from high school.⁶⁴

In 1988, however, some colleges began to report an increase in undergraduate admissions applications from black applicants.⁶⁵ The news, however, on graduate school admissions has not been as promising. Black enrollment has been dropping in graduate disciplines.⁶⁶ This drop came at the heels of what had been a gradual increase. According to the National Research Council, between 1989 and 1991 the number of blacks in Ph.D. programs increased by thirteen percent.⁶⁷

The continuing instances of racial incidents on college campuses have forced racism to the front of the college agenda.⁶⁸ Students state that race relations is the top issue on college campuses nationwide.⁶⁹ In some cases, social interaction by

icy, JET, Feb. 14, 1994, at 25.

62. Fiske, *supra* note 59, at A1.

63. Barbara Vobejda, *2-Year Colleges: Mixed Success As Vehicle of Upward Mobility*, WASH. POST, May 5, 1989, at A1 (reporting that 40% of college students go to community colleges and that minorities are choosing community colleges in disproportionate numbers; 47% of minorities who were enrolled in college in 1986 were attending two-year institutions); see also A. Goldstein, *Community Colleges Lead Enrollment Surge in Md*, WASH. POST, Oct. 19, 1988, at A1 (discussing unusually high enrollment in community colleges).

64. *Fewer Blacks Going to College*, WASH. AFRO AM., Aug. 4, 1987, at 7; *High School Graduation Rate Increases for Black Students*, WASH. POST, Nov. 21, 1994, at A16.

65. Deirdre Carmody, *Rise in Black Applications Reported by Many Colleges*, N.Y. TIMES, May 19, 1988, at A20 (reporting college increases at Harvard, Yale, Hampshire College, University of Colorado, Dickinson College, and Brandeis College); see *Black Enrollment Up at Va. Colleges*, WASH. POST, May 29, 1988, at G4.

66. Marc Fisher, *Grad Schools Closing Out on Minorities*, WASH. POST, Oct. 12, 1987, at C1.

67. See *More Black PhDs*, WASH. POST, May 9, 1992, at A20. In 1992, the National Center for Education Statistics reported that although blacks make up 12% of the national population, blacks received only 4.7% (1,145) of the doctorates that were awarded. Interview with Professor William F. Brazziel, Professor of Higher Education and Director of Higher Education Programs, University of Connecticut.

68. See Charles W. Hall & Jeff Leeds, *U-Va. Upholds Its Honor Code*, WASH. POST, Mar. 4, 1994, at A1, A16 (reporting that some black students believe the honor code is used disproportionately against black students).

69. *Campus Life; What Students Think: Racism is a Big Issue*, N.Y. TIMES, Oct. 8,

black students on college campuses have become increasingly strained.⁷⁰ Some students say that they are trying so hard to integrate that in order to avoid racial tension with whites, they even avoid greeting one another in an attempt to be "invisible on campus."⁷¹

Other concerns have been raised over the tendency of black students to seek refuge and comfort with fellow black students, at the expense of fostering interaction with white students. Some suggest that black students tend to "voluntarily segregate" themselves from white students.⁷² It appears that black and white students attribute separateness to an act of will by the other group, and there is little dialogue between the two groups.⁷³ This divide is magnified in reports by black students expressing concern about perceptions by whites that they are intellectually inferior.⁷⁴ At the University of Alabama, officials have attempted to undercut these misunderstandings by taking measures that will integrate the campus' Greek fraternity system.⁷⁵ The University created an accreditation board that reviews fraternity and sorority chapters every four years.⁷⁶ Part of the accreditation process requires black and white fraternities

1989, at 43; see also Lisa Leff, *Students Detail Racism Complaints at U-Md. Rally*, WASH. POST, Nov. 4, 1993, at C3 (discussing a meeting organized to air grievances about minority treatment by the school newspaper and administration). Even when racial gains have been achieved by black students with white student support, controversy along racial lines erupts. See *Blacks Winning Six Campus Queen Titles at White University Stirs Controversy*, JET, Nov. 14, 1994, at 54-57; see also *Minority Students at U. of GA Protest Selection Process for School's Homecoming Queen*, JET, Nov. 14, 1994, at 58.

70. Trey Ellis & David Dent, *Campus Racism: A Special Report*, PLAYBOY, June 1989, at 74. Walter Allen, a professor of sociology and Afro-American and African Studies states that: "Universities don't go to the street corner, they take the cream of the crop now more so than ever. Yet it's not a supportive environment. Fully 75% of black students report that they don't feel a part of campus life." *Id.* at 157. Graduating rates at white colleges are generally lower for black students than for their white counterparts.

71. *Id.*

72. Richard Bernstein, *Black and White on Campus: Learning Tolerance, Not Love, and Separateness*, N.Y. TIMES, May 26, 1988, at A20.

73. *Id.*

74. *Id.*

75. *Integration Is at Hand for Fraternity System*, N.Y. TIMES, Aug. 25, 1991, at 47.

76. *Id.*

and sororities to put forth good faith efforts to integrate their organizations.⁷⁷

C. Remedial Measures

A number of colleges and universities have adopted measures for making campuses more hospitable to an increasingly diverse student body,⁷⁸ including hiring more minority professors. Many of the remedial measures undertaken by administrators at institutions have been in response to student protests designed to encourage university officials to be more accountable to the needs of minority students. Many minority students have a strong desire to be taught by professors "who look like them."⁷⁹ As a result, the current demand for black professors has escalated. In 1988, while black students accounted for approximately nine percent of students on college campuses nationwide, black professors accounted for only four percent of faculty overall, with most teaching at historically black colleges and universities.⁸⁰ Schools such as Yale, Duke,⁸¹ Williams College, Wellesley Col-

77. *Id.*

78. Rhonda O. Covington, *Minority Populations at Predominantly White Campuses*, BLACK ISSUES IN HIGHER EDUC., Sept. 9, 1993, at 39. *But see* O'Neal Smalls, *Faculty Should Not Hesitate To Take Stance on Political Issues*, USC TIMES, Feb. 25, 1994, at 4. Professor Smalls, the sole tenured black on the faculty of the school of law, is critical of the University of South Carolina, Columbia, Faculty Senate for tabling a resolution calling on the General Assembly to remove the Confederate battle flag from the top of the state capitol. On this point, see Darryl Brown, Note, *Racism and Race Relations in the University*, 76 VA. L. REV. 295, 318-19 (1990).

79. To the extent that white students do not see or are not taught by black teachers, the question arises: to what extent do they enter, matriculate, and graduate from college with the notion that black people are not educated sufficiently to teach them? Correspondingly,

[i]n order to change stereotypical attitude towards minority students[, a] concerted effort should be made to increase the number of minority faculty in [all schools of higher education]. Minority professors serve as role models and mentors, as well as advisors to students dealing with feelings of isolation and the sometimes hostile attitudes of classmates and faculty.

Kelvin R. Smith, *Minorities in Science and Medicine*, CRISIS, Feb./Mar., 1994, at 12.

80. Ann Hardie, *As Black Professors Get Rarer, Colleges Sweeten Pot*, ATLANTA J., Aug. 7, 1988, at B1.

81. See Peter Applebome, *Goal Unmet, Duke Reveals Perils in Effort to Increase Black Faculty*, N.Y. TIMES, Sept. 19, 1993, at 1; Denise K. Magner, *Duke Tries Again*, CHRON. OF HIGHER EDUC., Feb. 16, 1994, at A25 (reporting that Duke University "has once again promised to double the number of black professors on its

lege, and the University of Vermont have adopted policies for attracting more black professors to their institutions.⁸² These efforts have been impeded, however, by the low percentage of blacks enrolled in non-professional graduate schools.⁸³

Ironically, notwithstanding an increasing need for black professors, studies show that racially linked disparities in pay continue to exist. A study at Berkeley showed that race and sex are directly linked to lower salaries paid to minority and female professors by colleges and universities.⁸⁴

Black students are not demanding only more black and minority faculty. At the University of North Carolina, black students protested delays in building a black cultural center on campus.⁸⁵ At the State University of New York, students protested the layoff of five professors.⁸⁶ Among the students' demands were the rehiring of the laid off professors and the restoration of a performing arts program that emphasized African American music and dance.⁸⁷ A student at Princeton urged others to file a federal civil rights complaint against that university over the institution's "inaction on race issues and patterns of accepted racial discrimination and harassment."⁸⁸

With the advent of a more diverse student body, colleges and universities are faced with demands for curricula which reflect this nation's diverse culture.⁸⁹ At Yale, administrators have

campus").

82. *Replying to Critics, Yale Moves to Recruit More Minority Professors*, N.Y. TIMES, Jan. 28, 1990, at 26; *Wellesley College Approves Hiring of Five Minorities*, JET, Jan. 29, 1990, at 14; *Duke Orders Policy of Hiring Blacks*, N.Y. TIMES, Apr. 25, 1988, at A11.

83. *Decline Found in Black Graduate Enrollment*, N.Y. TIMES, Nov. 5, 1987, at A33.

84. *Race and Sex Tied to Disparities in Professors' Pay*, N.Y. TIMES, Dec. 8, 1991, at 71.

85. *UNC Protesters Won't Face Disorderly Conduct Charge*, JET, May 31, 1993, at 25.

86. Jonathan Rabinovitz, *SUNY Protest Succeeds as Library Takeover Ends*, N.Y. TIMES, Feb. 24, 1993, at B5.

87. *Id.*

88. *Civil Rights Complaints Sought at Princeton*, N.Y. TIMES, Feb. 13, 1993, at 26.

89. Multicultural curriculum reform at all levels of education remains unfulfilled and often mired in controversy. See Dorothy Gilliam, *Defending Afrocentric Pioneering*, WASH. POST, Sept. 11, 1993, at B1. Although the term "Afrocentric" is said to be misunderstood, it continues to be considered "a dynamic theory of change." M.

struggled with improving their highly regarded black studies program.⁹⁰ Stanford University, which includes a course in Western culture as a requirement for graduation, changed its course curriculum to feature the contributions of women and minorities.⁹¹ The Reagan administration's Education Secretary, William Bennett, criticized this change.⁹² English professors at the University of Massachusetts at Amherst proposed that social and racial diversity be included in freshman writing classes.⁹³ Students at Wayne State University protested to the administration, demanding that the university "double the financing of a newly created Department of Africana Studies."⁹⁴ The faculty at the University of Texas challenged a proposal that would require students to take multicultural classes to graduate.⁹⁵ Many viewed the proposal as a referendum on "political correctness."⁹⁶

CONCLUSION

The lawyers involved in the collective cases that resulted in the *Brown* decision⁹⁷ had great vision and inexhaustible hope that integration would usher in a new day with reformed values for America.⁹⁸ As *Brown* turns forty, questions remain about

Anthony Fitchue, *Afrocentricity: Reconstructing Cultural Values*, BLACK ISSUES IN HIGHER EDUC., Sept. 23, 1993, at 38.

90. *Yale's Black Studies Said to Flounder*, N.Y. TIMES, Feb. 13, 1993, at B3.

91. Robert Lindsey, *Bennett Says Stanford Was Intimidated into Changing Courses*, N.Y. TIMES, Apr. 19, 1988, at A18.

92. *Id.*

93. *Should a Writing Class Teach Social Diversity?*, N.Y. TIMES, Feb. 3, 1991, at 43.

94. *Blacks Call Off Campus Protest in Detroit*, N.Y. TIMES, Apr. 24, 1989, at 13.

95. *Dean Delays Changes in Disputed Course*, N.Y. TIMES, July 29, 1990, at 1.

96. Anthony DePalma, *In Campus Debate on New Orthodoxy, a Counteroffensive*, N.Y. TIMES, Sept. 25, 1991, at 1.

97. See J. Clay Smith, Jr., *Thurgood Marshall: An Heir of Charles Hamilton Houston*, 20 HASTINGS CONST. L.Q. 503, 514-15 (1993) (listing the lawyers and the specific cases culminating in *Brown*).

98. See generally JACK GREENBERG, *CRUSADERS IN THE COURTS* (1994); RICHARD KLUGER, *SIMPLE JUSTICE* (1975); GENNA R. MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* (1983); MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1956-1961* (1994).

the realization of that vision then, and now, and whether the values expressed in *Brown* have reformed America. The views on these questions are mixed, and even Oliver White Hill, one of the lawyers whose legal acumen helped to desegregate the public schools in Virginia, is ambivalent.⁹⁹ The views are mixed because the numbers of black students in college are mixed. Hill probably wonders how he, who rose from poverty to become a successful black lawyer in the South, is now told that there is a decline of black males attending college¹⁰⁰ and of the number of doctorates earned by both black males and females.¹⁰¹ He also must be concerned to learn that racial tensions on some southern college campuses are escalating.¹⁰²

As segregation in the public colleges and universities continues to grow,¹⁰³ it should come as no surprise that some may now question whether the promises of *Brown*, and the hopes of legal advocates like Thurgood Marshall and Charles Hamilton Houston, are being dashed¹⁰⁴ without the slightest concern for increased educational opportunities that assure greater racial

99. Smith, *supra* note 97, at 510 n.34; *Brown v. Board of Education: Lawyer on Brown Team Talks about Change*, ABA GOAL IX, Winter 1994, at 1.

100. Retha Hill, *Scarce Man on Campus*, WASH. POST, Mar. 21, 1994, at 1 (reporting that converging pressures keep black males from college); Mary Jordan, *5% Fewer Black Males Attend College*, WASH. POST, Feb. 28, 1994, at 1; Catherine S. Manegold, *Fewer Men Earn Doctorates, Particularly Among Blacks*, N.Y. TIMES, Jan. 18, 1994, at A14.

101. Christian R. González, *Study: Hispanic Doctorates Rise 41% Since 1982*, HISPANIC LINK WKLY. REP., Jan. 24, 1994, at 2 (reporting that in 1982, blacks earned 1,047 doctorates and in 1992, that number had declined to 951, down 9.2%). *But see Many Minority Groups Make Gains in Higher Education*, JOHNS HOPKINS NEWSL., Feb. 4, 1994, at A6 (reporting that "[m]inorities achieved some notable gains in doctorate degrees awarded in the sciences and engineering. The physical sciences and life sciences accounted for 26 percent of minority doctorates in 1992.").

102. Shawn Matthews, *Young Voices Speak Out on Racism*, THE STATE (Columbia, S.C.) Feb. 27, 1994, at D1. Matthews, a white student at the University of South Carolina reports, "One would think that a campus such as USC that preaches tolerance, independence and diversity would have wonderful race relations. But the truth is that we do not and I find it very upsetting." *Id.*

103. Mary Jordan, *College Dorms Reflect Trend of Self-Segregation*, WASH. POST, Mar. 6, 1994, at 1; Mary Jordan, *Segregation in Schools Increases*, WASH. POST, Dec. 14, 1993, at 1.

104. See Juan Williams, *Support for Desegregation Declines, Study Says: 30 Years After Landmark Ruling, Educational Systems Seen as Reverting*, WASH. POST, Jan. 19, 1985, at A7.

interaction.¹⁰⁵ The challenge for the days ahead is for society to secure the values etched in the *Brown* decision on white campuses and encourage all students to share in each others' rich culture without demanding that people of color abandon their own.

In 1944, Gunnar Myrdal may not have anticipated that ten years after his book was published, the U.S. Supreme Court would determine that the separate but equal doctrine in public education would be ruled unconstitutional. Nor could Myrdal have anticipated that as a result of that decision, black students would not all define "[e]ducation [as] an assimilation of white American culture."¹⁰⁶ Today, democracy does not require the assimilation of anything more than the culture embodied in the American Creed, a creed that requires the tolerance of all people and cultures, a value that *Brown* amended to the American Creed.

105. Andrea Stone and John Larrabee, *Racism Taints Universities' Hallowed Halls*, USA TODAY, Nov. 9, 1992, at 6A. But see Peter Applebome, *Bold Leap into a Minority: Whites at Black Colleges*, N.Y. TIMES, May 5, 1993, at 1.

106. MYRDAL, *supra* note 1, at 879.