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by
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In 1964, 300,000 blacks were enrolled in the nation's higher education system, most of them attending black colleges and universities in the South; 4,700,000 whites attended colleges during the same year. With passage of the 1964 Civil Rights Law, the federal government acknowledged an inequity in blacks' opportunity to attend college and gave promise of becoming a major source of pressure for desegregating higher education. But the potential of Title VI, the promise of government intervention to accomplish greater equity, has never been fulfilled.

Specifically, Title VI renders discriminatory agencies and institutions, including colleges and universities, ineligible to receive federal funds. Title VI allows individuals to file civil complaints with the federal government against all colleges and universities that discriminate in formal and informal ways. It contains the threat to withdraw funds both if individual complainants successfully prove discrimination, and also if the federal government, through routine monitoring, finds system-wide discrimination. But Congress, in passing the new law, gave little guidance about how to formulate remedies for system-wide segregation. Consequently, the first efforts of the Johnson Administration, in 1968, to demonstrate which colleges and universities were discriminating and to prescribe what needed to be done to achieve compliance with the new statute were characterized by uncertainty.

Title VI findings of system-wide discrimination in public higher education were initially based upon two kinds of evidence: (1) the prior existence of laws and policies that required separation of students by race into separate institutions before the *Brown v. Board of Education* (1954)[1] decision; and (2) enrollment and employment patterns showing concentrations of students, faculty, and staff by race within certain institutions within the state public education systems. Title VI was subsequently ruled to apply to system-wide discrimination only in those 19 states guilty of having operated legally-sanctioned dual-racial systems.

After correspondence, site visits, and review of enrollment and employment data, the Director of the Office for Civil Rights (OCR) at the U.S. Department of Health, Education and Welfare began sending letters to governors of ten states indicating failure to eliminate the lingering effects of past segregation laws and policies. Moreover, he asked the ten governors to submit a "desegregation plan" for their states indicating measures that would be taken to eliminate the effects of past discrimination. The ten states were Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania, and Virginia. Not until 1981 were officials in the remaining states guilty of de jure segregation — Alabama, Delaware, Kentucky, Missouri, South Carolina, Texas, and West Virginia — notified of Title VI noncompliance.

The OCR Director's 1969 letter to the governor of the State of Virginia included the following findings:

> The Office for Civil Rights of the Department of Health, Education and Welfare has required that all institutions of higher education receiving Federal financial assistance submit a compliance report indicating the racial enrollment at these institutions. Based on these reports particular colleges are visited to determine their compliance with Title VI of the Civil Rights Acts of 1964. These visits, together with the reports received from the four-year State colleges and universities in Virginia, indicate that the State of Virginia is operating a non-unitary system of higher education.
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> Specifically, the predominantly white State in-

stitutions providing four or more years of higher education have an enrollment which is approximately 99 percent white. The predominantly black institutions have an enrollment which is predominantly black in similar proportion. In addition to this situation which prevails in individual institutions throughout the State, the two land grant colleges, Virginia Polytechnic Institute and Virginia State College, originally devised as separate agricultural and technical colleges, one for blacks and one for whites, remain structurally separate and predominantly of one race, the latter black and the former white. Another manifestation of the State's racially dual system of higher education is evident in the City of Norfolk in which are situated two large institutions, predominantly white Old Dominion University and predominantly black Norfolk State, the enrollment of which is 98 percent Negro.[2]

Requirements for remedy of past discrimination were not codified and standardized until 1977 upon order of the Federal District Court.[3] Prior to that time OCR officials dealt with each state independently, attempting to extract as many policy concessions as possible given the specific character of the segregation problem in each state. The desegregation guidelines, referred to as "Criteria" in the *Federal Register* (1978)[4], contain the following provision:

1. The proportion of black high school graduates throughout each state shall be equal to the proportion of white high school graduates entering two-year and four-year undergraduate institutions of higher education.
2. There shall be an annual increase in the proportion of black students in traditionally four-year institutions of higher education.
3. Disparity between the proportion of black high school graduates and white high school graduates entering traditionally white institutions of higher education will be reduced by at least 50% by academic year 1982-83.
4. The proportion of black state residents who graduate from undergraduate schools and enter graduate schools shall be equal to the proportion of white state residents who enter such schools.
5. Increase the total proportion of white students attending traditionally black institutions.

Where facility and staff are concerned similar goals are required. They are to be calculated based upon availability pools that consist of black Ph.D. and Master's degree holders within relevant occupational fields and geographical locations.

It is difficult to ascertain from existing compliance documents the nature of the programs that have been proposed and subsequently implemented by state and local officials. Title VI states seem to have focused their efforts in the direction of new recruitment projects, special scholarship programs, new instructional programs, and improved facilities at black institutions. But with few exceptions compliance reports do not contain sufficient and appropriate details for an understanding and evaluation of the campus-level programs and activities that were planned and undertaken to achieve enrollment and employment increases.

Moreover, projects planned for one year are reported in subsequent years never to have been implemented. In one case, the state's higher education executive failed to convince the legislature to fund all budgetary programs for a given fiscal year. The reports sometimes include indications of the number of recruitment trips undertaken by admission officers to predominantly black high schools. But such information gives the impression of documenting the efforts made by the college, efforts that attracted little response from potential black enrollees. There is no evidence of recruitment of the kind admissions officers know to be required for success. For the most part the states' Title VI compliance consisted of going through the motions. Some state policymakers, those in Louisiana, Mississippi, North Carolina, and Ohio, for a time successfully refused to comply at all. The state role in Title VI regulation has ranged from outright defiance to ineffectual acquiescence. Consequently, on several occasions between 1968 and 1988, the NAACP Legal Defense Fund (LDF) asked the courts to require OCR to pressure state officials to report progress and to undertake appropriate remedial actions.

In response to a 1982 petition from LDF for further relief, the Washington Federal District Court concluded, in reference to Arkansas, Georgia, Florida, Virginia, Oklahoma, and the North Carolina community college system:

> Each of these states has defaulted in major respects on its plan commitments and on the desegregation requirements of the Criteria of Title VI. Each state has not achieved the principal objectives in its plan because of the state's failure to implement concrete and specific measures adequate to ensure that the promised desegregation goals would be achieved. . . .[5]

A review of state plans, state compliance reports, and OCR letters of finding (official responses to the compliance materials submitted) have consistently shown little state effort either to propose or to implement reasonable remedies for segregation. These same documents suggest little federal effort as well,

for the documents were approved in most cases by federal officials even though they were unclear and in many instances obviously inadequate.

As further evidence of inadequate federal effort, OCR failed to respond to many of the complaints of discrimination against individuals and also ignored much evidence of institution-wide discrimination contained in routine annual compliance reports. In 1986 alone OCR received 2,648 individual complaints and initiated 196 compliance reviews. OCR issued only 27 notices of opportunity for hearing between 1981 and 1985 despite finding 2,000 violations of civil rights law. Over that same period it referred only 24 additional cases to the Justice Department.[6] This pattern extends a policy of non-implementation that began in 1970 when the original *Adams* case was initiated. The Nixon Administration Office for Civil Rights also engaged in non-enforcement of individual complaints filed under Title VI.[7]

There is general agreement today that not much has taken place as a result of Title VI regulation of higher education over the past 20 years. The repeated judgments for further relief at the Federal District Court, the 1987 findings of a select Congressional Committee, and repeated independent policy analyses all reach the same conclusion.

In 1984 the Acting Director for Policy Enforcement in OCR wrote to the Assistant Secretary for Civil Rights:

> Because the state systems with which it (OCR) has been dealing have not heretofore even approximated what might be considered the elimination of the vestiges of the dual systems, OCR has never defined how it would decide when that complete elimination of vestiges has been achieved in a state system.[8]

Similarly, in its final review of compliance documents submitted by states whose desegregation plans expired in 1985 and 1986, OCR reported that the states did not meet the desegregation enrollment goals, with only two — Delaware and South Carolina — showing any progress. None of the ten states involved met the employment goals for faculty they had set, though Georgia and Oklahoma met one numerical objective in the category of hiring black nondoctoral faculty. According to testimony at a hearing of the House of Representatives' Committee on Government Operations, OCR noted that four states out of nine setting goals for hiring doctoral level black administrators met their goals; and that six of nine setting goals for employing more nondoctoral administrators were partially successful.[9]

Federal officials argue that most Title VI states have acted in sufficient good faith and that failure to enroll and hire more blacks in public higher education stems from factors beyond the control of government and higher education policymakers. The Department of Education ruled recently that Georgia need no longer plan and implement remedies for desegregation past the period of their current plan if the measures included are completed. These measures involve completing: (1) some physical facilities construction projects, (2) public relations programs to encourage whites to enroll at Albany State College (a traditionally black institution), and (3) organization of an agricultural extension program jointly administered by Fort Valley State, a traditionally black institution, and the University of Georgia. The Department of Education reached this decision despite convincing evidence of continuing racial inequity.

Similarly, Department of Education officials notified five other states last year of compliance with Title VI — Arkansas, North Carolina's two-year college system, Delaware, South Carolina, and West Virginia. Florida, Kentucky, Pennsylvania, Texas, Arkansas, Oklahoma remain under jurisdiction of the Department, awaiting a ruling or soon expecting to complete the time period for conducting desegregation activities included in their state plans. The Department's dispensation in their cases is likely to be similar to that granted Georgia. Alabama, Tennessee, Louisiana, Maryland, Mississippi, Ohio, and North Carolina's state university system remain under the jurisdiction of the federal judiciary, which may or may not extend desegregation remedies.

The most compelling evidence of the demise of Title VI emerged last summer when the Federal Court in the District of Columbia ruled that plaintiffs in the original *Adams v. Richardson*[10] court case no longer hold standing to pursue relief from discrimination through the federal courts. The NAACP Legal Defense Fund successfully petitioned the court in 1972 requiring the federal government to implement Title VI. With the Nixon Administration in 1970 Title VI regulatory activities had withered. The *Adams* case got the federal courts involved in pressuring the Office for Civil Rights at the U.S. Department of Education to implement Title VI. Favorable rulings since 1973 by the court provided almost the sole energy for sustained compliance with Title VI. Although LDF has appealed the recent decision regarding lack of standing by plaintiffs in *Adams,* the federal courts no longer monitor Title VI regulatory activities of the Office for Civil Rights at the Department of Education. Freed from court oversight, the Department of Education has been able to arbitrarily release states from their civil rights responsibilities in higher education.

As a consequence, equal education opportunity for blacks at the postsecondary level has stagnated or grown worse. This judgment, though accurate, does not reflect the total picture of black participation in higher education from 1969 to the present. Title VI regulation in 19 states occurred within the context of a much broader effort to secure equal op-

portunity for blacks in higher education. It is important to take this broader picture into account in order to suggest future strategies to promote the successes and redeem the failures.

On a national scale the following important trends seem evident:[11]

- Black high school graduation rates have increased from about 56% in 1967 to 76% in 1986;
- Although total black enrollment increased by 170% between 1964 and 1986, parity with whites has not been achieved;
- Only 8% of black 18- to 20-year-olds enrolled in college in 1964, while 22% did so in 1986;
- The percentage of black 18- to 20-year-old high school graduates enrolling in college increased from 23.5% in 1967 to 28% in 1986.

The problem is that in 1976 black 18- to 20-year-old high school graduates enrolled in college at a much higher rate, 36%. Title VI regulation and all other attempts to improve black participation in higher education are substantially vitiated by the phenomenon of black high school graduates failing to enroll in college. Another important aspect of declining black participation is high attrition. While the percentage of blacks completing four years of college increased by 474% between 1964 and 1986 — correspondingly the percentage of black persons aged 25 to 34 holding college degrees rose from 3.9% to 10.6% over the same period — the number of bachelor's degrees awarded to blacks between 1976 and 1985 decreased by 3%.[12]

Non-implementation of Title VI remedies at the local level does not explain these trends despite the fact that over 50% of blacks in college enroll in Title VI states and roughly 46% of all public institutions are affected by system-wide Title VI regulation. In fact, between 1975 and 1985 implementation probably expanded slightly as the Federal District Court in Washington grew weary of repeated appeals for further relief by LDF and instructed OCR in more direct ways to implement the law. But it is during this period that black enrollment declined both in the Title VI region and nationally as well.

It may be that serious effort during the latter period of implementation occurred too late for good results to emerge. By then there were new barriers to participation, such as reductions in federal students aid programs. The major contribution of the early years of Title VI regulation may have been the elimination of all formal laws, policies, and overt practices aimed specifically at keeping blacks excluded or concentrated in traditionally black institutions. It is during this period that the most positive changes seem to have come about.

Clearly, there were then and remain today factors, beyond the scope of Title VI intervention, negatively affecting its outcomes. Passage of substantial federal student aid laws in 1971 and subsequent reductions in the 1980s, the rise and fall of the Civil Rights Movement and of civil rights as a broad national political issue, seemingly unlimited growth followed by severely constrained expansion of the college and university enterprise, changing quality of elementary and secondary education systems — all are factors related to black participation levels in higher education over the past 20 years.

In light of this observation, even if there was strong Title VI implementation at this time, it might still fail to produce results. Evaluating the impact of Title VI is complicated by several other factors, but this should not be used to argue that it had no impact. As noted earlier, the disappearance of discriminatory laws and policies is due to colleges' and universities' fears of losing federal funds, a sanction provided by Title VI. On the other hand, recalcitrance by state and campus policymakers, sanctioned by the inactivity of federal officials, may have led college officials to ignore their responsibility to a greater degree than they might have if Title VI regulation did not exist.

The point to make is that past experience shows the need to continue Title VI and the need for other factors to work positively at the same time in the same direction. Today's concern is not whether Title VI has failed. It was never substantially implemented, and its influence at the campus level was at best nonsystematic and at worst disruptive. The relevant policy questions involve knowing the marginal impact of Title VI: What factors are associated with non-implementation? What additional factors, beyond Title VI, influenced outcomes? And most important, what policy resources are today needed both to compel implementation and to affect positively the other relevant circumstances?

References

[1] *Brown v. Board of Education,* 347 U.S. 483 (1954).

[2] Panetta, L., Director of the Office of Civil Rights, U.S. Department of Health, Education, and Welfare, letter to M.E. Godwin, Governor of the Commonwealth of Virginia, December 2, 1969.

[3] *Adams v. Califano,* 430 F. Supp. 118, 121 (D.D.C. 1977).

[4] *Federal Register* 1977, Vol. 42, No. 155, pp. 40780-40785; 1978, Vol. 43, No. 32, pp. 6658-6664.

[5] *Adams v. Bell,* D.C. Civil Action No. 70-3095, March 24, 1982. P. 2.

[6] U.S. Department of Education. (1987). *Office of Civil Rights' Sixth Annual Report.* Washington, DC: Government Printing Office. P. v.

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[9] U.S. Congress. (1987). *Failure and Fraud.* P. 10.

[10] *Adams v. Richardson,* 356 F. Supp. 92 (D.D.C. 1973).

[11] National Center for Education Statistics. (1987). *Higher Education General Information Surveys, 1964-1987.* Washington, DC: Government Printing Office.

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