

STRATEGIES FOR EQUALIZING
HIGHER EDUCATIONAL OPPORTUNITIES
FOR BLACK STUDENTS

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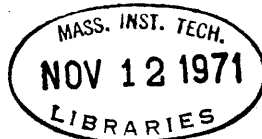
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in Partial Fulfillment of the Requirements
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Recent studies and law suits have focused on the current plight of the black state colleges and universities, vestiges of the de jure segregation of black and white student in public higher education. An examination of the characteristics of those institutions and of the students which they serve suggests that an equalization of opportunity in higher education--whether through court supervised disestablishment of dual systems or through legislative action--will require a reallocation of state resources to students with the greatest academic and financial needs. While the use of compensatory and remedial programs is usually discouraged in higher education, a failure to address the special needs of black students in either all black institutions or in integrated systems would deny higher educational opportunity for many black students.

Two state plans are examined, the Maryland Plan to Achieve a More Representative Balance Among Four-Year Public Institutions of Higher Learning and the New York State Higher Educational Opportunity Program. Both are assessed in light of the current case law regarding standards for integrating state systems and criticized on the basis of educational theory regarding measurement of equality of educational opportunity. This examination leads to the conclusion that courts reviewing dual state systems will have to adopt a strict standard of review to preserve the favored position of black students in education under the Constitution and to insure a state system which is both operationally sound and educationally relevant.

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I. STATEMENT OF THE PROBLEM

Recent attention has been focused on the black state colleges and universities; schools which are vestiges of the days when states--by law--provided separate facilities in higher education for blacks and whites. Black institutions are among the most studied in higher education; yet, for all of the attention given to those schools by attorneys, social scientists and educators, the quality of educational opportunity available to black college and university students is still problematic.¹ Some states, mostly Southern, simply

¹John Egerton, State Universities and Black Americans: An Inquiry into Desegregation and Equity for Negroes in 100 Public Universities (Atlanta: Southern Education Reporting Service, 1969); Fred Crossland, Minority Access to College: A Ford Foundation Report (New York: Schocken Books, 1971); John Egerton, The Black Public Colleges: Integration and Disintegration (Nashville: Race Relations Information Center, 1971); The Carnegie Commission on Higher Education, From Isolation to Mainstream: Problems of the Colleges Founded for Negroes (New York: McGraw-Hill Book Company, 1971); James Coleman, et. al., Equality of Educational Opportunity (Washington: U. S. Office of Education, U. S. Department of Health Education and Welfare, 1966); Christopher Jencks and David Reisman, The Academic Revolution (New York: Doubleday and Company, Inc., 1969) (Chapter X, "Negroes and Their Colleges," originally appeared in 37 Harv. Ed. Rev. 3 [Winter 1967]); U. S. Bureau of Education, Negro Education: A Study of Private and Higher Schools for Colored People in the U. S. (New York: Arno Press and the New York Times, 1917); U. S. Bureau of Education, Department of the Interior, Survey of Negro Colleges and Universities (New York: Negro University Press, 1929); McGrath, The Predominately Negro College in Transition (New York: Bureau of Publications, Teachers College, Columbia University, 1965). One recent study was received too late for inclusion: Frank Bowles and Frank A. DeCosta, Between Two Worlds: A Profile of Negro Higher Education (New York: McGraw Hill Book Company, forthcoming).

ignore the notion of equal opportunity in higher education, while states seem to be in retreat even from the discredited standard of "separate-but-equal."² The problem is more acute when one realizes the expected burden on all institutions of higher education in the near future. Since a substantial proportion of that increase will consist of black students who might not heretofore have attended college,³ we should expect to see a new vigorous commitment on the part of state legislatures, the courts, the national administration and educational planners. For reasons which will later be clear, there is no cause for such optimism.

The area of equal educational opportunity for black students does not lack agitation for a change. The National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc. currently has a suit pending against the Department of Health Education and Welfare alleging the Department's failure to proceed against states which continue to maintain dual systems of higher education. The suit maintains that HEW violates the Civil Rights Act of 1964 and the Fifth and Fourteenth Amendments to the

²See Note 85, infra.

³Citing a study by the Institute for Higher Educational Opportunity, A Unitary State System of Higher Education (Atlanta: Southern Regional Board, 1970), Crossland notes that "by 1975 there will be about two and a half million students in colleges in the South with two million of these in public institutions. This is almost 700,000 students more than are enrolled today. Much of this increase will come because more black students will go to college." Crossland, op. cit., n. 128.

United States Constitution by not ending the flow of federal funds to systems which discriminate on the basis of race. The suit charges that HEW has knowingly failed to withhold funds from public universities which discriminate and continues to decline to exercise its jurisdiction under Title IV of the Civil Rights Act. No state has yet been cited for noncompliance with Federal Law and several states have yet to even submit plans for the disestablishment of the dual nature of their educational systems.⁴

Since 1968, other suits attacking segregation have been filed in federal courts as well. A suit to block a branch of the Auburn University at a location where it would compete with black Alabama State University was decided against black plaintiffs. Cases have been filed or are pending in Mississippi, Tennessee, Alabama, North Carolina and Virginia.⁵ Generally, these suits attack disintegration of black schools by construction of competing facilities or by sheer attrition and neglect. A suit has also been contemplated by the Center for Responsive Law of Washington, D. C. against the Department of Agriculture for its role in allowing federal research funds to be directed away from the supposedly "separate-but-equal" black land grant colleges and universities.⁶

⁴Egerton, The Black Public Colleges, op. cit., p. 28; see also discussion of state plans for integration of systems of higher education, infra.

⁵Egerton, op. cit., p. 27.

⁶J. Rosenthal and Mack Thompson, "The Negro Land Grant Colleges: A Brief Historical Sketch and Raising of Issues," mimeograph, Study prepared for the Center for Responsive Law, Washington, D. C. 1970.

The court response to these challenges has been less than encouraging. Unlike the cases dealing with elementary and secondary education, the federal courts have yet to formulate a notion of what constitutes equality of educational opportunity in higher education which would allow them to review state systems and evaluate state plans for reorganization. In part, this is the result of the way in which particular cases have been framed; in both Tennessee and Alabama, plaintiffs in those cases were almost single-mindedly focused on competition to existing black institutions through the construction of competing physical facilities.⁷ Little has been presented to the courts about the kinds of questions on educational opportunity which we will discuss later.⁸ There are theories which would allow a comprehensive assessment of state systems and force the courts to address the question of the quality of opportunity available, but these have argued from those secondary level cases which--being derived from Brown and progeny--hold integration, quality education, and equal educational opportunity to be synonymous.⁹

⁷Alabama State Teachers Association v. Alabama Public School and College Authority, 289 F. Supp. 784 (M.D. Ala. 1968), aff'd per curiam, 393 U. S. 400 (hereinafter cited as ASTA); Sanders v. Ellington, 288 F. Supp. 937 (M.D. Tenn. 1968).

⁸See Section IV, infra.

⁹"The Affirmative Duty to Integrate in Higher Education," 79 Yale L. J. 666 (1970). The authors noted the necessity for differences in admissions standards at different schools and the special purposes of individual campuses. For their four-point conclusion, see Section IV, infra.

Brown and its progeny insisted that on the elementary and secondary level, states maintain non-discriminatory policies, and later, the courts came to insist that the states move immediately to fulfill an affirmative duty to integrate its school systems.¹⁰ Yet the rule of a duty for affirmative action is not clearly applicable to higher education. Lower federal courts have held that they do "not agree that the scope of the duty should be extended as far in higher education as it has been in the elementary and secondary public schools area."¹¹ Later, in Sanders v. Ellington,¹² a federal court found that a dual system in Tennessee was perpetuated in spite of non-discriminatory admissions policies and the affirmative duty role for secondary education was cited to require action towards dismantling of the Tennessee system. In the meantime, the Supreme Court affirmed the decision in the Alabama case but without opinion,¹³ leaving the question of the applicability

¹⁰ Brown v. Board of Education of Topeka Kansas 347 U. S. 483 (1954), hereinafter cited as Brown I; references to the Brown cases includes Brown II on relief, 349 U. S. 294 (1955); Green v. County School Board of New Kent County, Virginia, 391 U. S. 430 (1969). ASTA, supra.; Alexander v. Holmes, 396 U. S. 19 (1969) (immediate duty to move now and hereafter to a unitary system).

¹¹ ASTA, 289 F. Supp. 787.

¹² 288 F. Supp. 937. (Tennessee held not to have fulfilled affirmative duty to desegregate and ordered to submit plan for moving towards a unitary system.)

¹³ 393 U. S. 400 (1969); in a dissenting opinion Mr. Justice Douglas strenuously objected, registering surprise that the affirmative duty role of Green did not apply.

of "affirmative duty" unresolved in the courts. Since the majority issued no opinion, grounds for the affirmation are not easily ascertained, but presumably an argument which could demonstrate how state policies perpetuate segregated systems and prevent movement towards a unitary system of higher education could prompt court agreement.

The higher education cases stand in stark contrast to subsequent development of secondary and elementary level cases. The most far reaching case on the secondary level has been Hobson v. Hansen,¹⁴ a case which has been aptly referred to as an exercise in the "judicial supervision of the color-blind school board."¹⁵ The Hobson case stands for maximum judicial interference in educational policy, certainly much more interference than was characterized by the Supreme Court requirement that states submit plans for the desegregation of secondary schools to circuit courts for approval. In Hobson, Judge Skelly Wright adopted a very strict standard of review of educational policy where the rights of disadvantaged minorities are at stake. The court ordered a reduction in de facto segregation, the institution of compensatory programs, and the abolition of a tracking system based on standardized exams which placed children who performed poorly in "slow" curricula. The

¹⁴269 F. Supp. 401 (D.D.C. 1967), appeal dismissed, 391 U. S. 417 (1968).

¹⁵See, "Hobson v. Hansen: Judicial Supervision of the Color-Blind School Board," 81 Harv. L. Rev. 1511 (1968).

Hobson case asserts that equal educational opportunity is a critical personal right and requires not only correction of adverse policies which are noninvidious, but correction of policies which are simply unresponsive to the needs of black, poor students.

The cases dealing with the educational needs of black students have come so far that they constitute an "inner circle of protected cases" securing rights for disadvantaged racial minorities which are not necessarily simultaneously extended to the economically deprived.¹⁶

Only lower level courts have attempted to deal with an appropriate standard of equality of educational opportunity and the Hobson case is far reaching. The Hobson court essentially takes all measurable characteristics of school systems as its guide; the court then orders compensatory programs for black students, indicating--but not explicitly setting out--an emphasis on equality of outcome by correcting the deficiencies induced by inferior secondary schools. The courts have yet to decide whether an equalization of inputs in secondary education is sufficient or whether as a substantive matter compensatory programs must be provided. Instead,

¹⁶Coons, Clune and Sugarman, "Educational Opportunity: A Workable Constitutional Test for State Financial Structures," 57 Cal. L. Rev. 305, 346 (1969). The test that Coons, Clune, and Sugarman propose for financing of elementary and secondary systems is that education may not be a function of wealth other than the wealth of the state as a whole; the secondary school cases based solely on race, however, do not help move towards this standard.

they have insisted on physical placement of students in integrated settings where school resources are assumed to be equalized and have left the provision of appropriations for "catch-up" funds to the federal government.

At issue in the desegregation of higher education will be whether or not courts must equalize outcome through compensatory and remedial programs; whether university and senior college admissions should continue to be privileged, with compensatory programs relegated to junior colleges and whether there will be trade-offs in higher education between integration as an absolute value and the maintenance of identifiably black institutions to serve special needs.

As we shall see, current public policy--with exceptions that we will discuss--does not favor the use of compensatory programs on the college level, preferring to base access to higher education solely on merit. The courts, on the other hand, have almost single-mindedly insisted on integration on the secondary level, but have not extended such a rigorous requirement to higher education. At the same time federal policy respecting states that have submitted plans for the disestablishment of their dual systems appears--though with a considerable amount of confusion--to favor an elimination of the racially identifiable character of public higher education. Through this tangle we hope to demonstrate that courts reviewing state systems will have to examine all resources available to students in a given state system for signs of input

inequality and insist on an equal outcome measure through compensatory and remedial programs.

This paper will analyze the characteristics of black state colleges and universities and their students in an attempt to arrive at some notion of equality of educational opportunity in higher education. The fact that with few exceptions, the record of the states and federal government as well as that of the courts has been so dismal compels as stringent a review of state systems as Judge Wright undertook with secondary school systems. After proposing the elements for judicial scrutiny of state systems of higher education we will then examine some problems of state planning for equal educational opportunity. Two state plans for increasing opportunity for black students will be examined as the beginnings of models for meeting the needs of disadvantaged students. As the Institute for Higher Educational Opportunity concluded, "If the goal of equal opportunity for higher education is to be reached, new planning must occur within a framework of criteria which are educationally oriented and operationally sound."¹⁷

¹⁷ Institute for Higher Educational Opportunity, A Unitary State System of Higher Education, op. cit.

II. THE CHARACTERISTICS OF BLACK INSTITUTIONS

There are thirty-two public four-year colleges and universities founded for black students, ranging in size from Delaware State College with 909 students to Southern University and A and M College in Louisiana with 9,978 students (see Appendix A). Many are designated as university level institutions, although none award the degree of Doctor of Philosophy; these are Florida A and M (Florida), Southern University and A and M College (Louisiana), North Carolina Agricultural and Technical State University, North Carolina Central University (North Carolina), Central State University (Ohio), Langston University (Oklahoma), Tennessee Agricultural and Industrial State University (Tennessee), and Texas Southern University (Texas). The remainder are four-year state colleges and junior colleges.

Traditionally, these institutions have trained professionals-- primarily teachers--in the social sciences, education and business. They have provided less of a career opportunity for their students in the natural sciences because of the inadequate preparation of black high school graduates in math and the greater capital expenditures required for these subjects. Public institutions have, however, begun expanding business programs, economics and nursing departments to a significant degree and Morgan State has recently initiated a graduate program in urban studies and city planning.

An important indicator of the current situation of the black state colleges and universities is the amount spent by the states on a per pupil basis, since black schools receive between fifty and seventy-five percent of their support from state governments.¹⁸ Table I shows the average expenditures on black and white public colleges of comparable size as reported by the Carnegie Commission on Higher Education.¹⁹ The Commission concluded that only Maryland, Florida and Mississippi now spend more per pupil on white schools than they do on black schools. In a similar study of black institutions, David Reisman and Christopher Jencks concluded that where disparities now exist, they are minimal.²⁰ Similarly, the Coleman Report on Higher Educational Opportunity as part of their general survey of access to equal educational opportunities stated, "We do not find any gross difference in per student expenditures as a function of the racial composition of the student body."²¹

¹⁸Commission on Higher Educational Opportunity in the South, The Negro and Higher Education in the South (1967), Table 7; also, National Association of State Universities and Land Grant Colleges, Public Negro Colleges: A Fact Book. The remaining categories are as follows: 12% from tuition, 25% from auxiliary sources, 10% from federally supported research, and 1% from gifts.

¹⁹Adapted from Table 9: Average State Expenditures Per Student in White and Black Colleges by State, 1967-68, Carnegie Commission, op. cit., pp. 48-49.

²⁰Reisman-Jencks, op. cit., p. 471.

²¹Coleman, et. al., op. cit., p. 417.

TABLE I

Average State Expenditures on Colleges of
Comparable Size, By State, 1967-1968

<u>State</u>	<u>Average State Expenditure Per Student Colleges for Negroes</u>	<u>Average State Expenditures Per Student Predominantly White Colleges (of comparable size)</u>
Alabama	\$1,277	\$ 592
Arkansas	615	507
Delaware	1,152	
Florida	1,159	1,264
Georgia	861	728
Kentucky	1,093	
Louisiana	1,173	895
Maryland	1,105	1,285
Mississippi	576	598
North Carolina	829	803
Ohio	837	
Oklahoma	580	571
Pennsylvania	1,080	935
South Carolina	1,399	
Tennessee	967	793
Texas	774	715
Virginia	<u>771</u>	<u>479</u>
<u>Total</u>	\$ 926	\$ 753

Certainly, the amount spent by states on their black as opposed to white institutions would be a significant indicator of the comparative quality of these institutions. Yet, as sole indicators, per pupil appropriations are misleading. The Carnegie Commission noted that some state figures represent the influence of special appropriations by state legislatures to help black colleges and universities catch up with white counterparts.²² The necessary expenditure of catch-up funds is a reflection of that fact that present equality of support rests on a platform of previous inequities. Black schools are thus unable to overcome the effects of past neglect.²³

The Carnegie Commission also pointed out that concerning categories of income, black public institutions receive less than their white counterparts do from gifts, sponsored research, endowments and foundation grants. What may appear to be an equal average expenditure must then be spread over higher student aid and service costs, without the benefit of higher supplementary sources of income.²⁴ The reasons for high student aid and services will later be clear, but the dollar stretching that black

²²As recommended by the Southern Regional Education Board, Special Financial Needs of Traditionally Negro Colleges: A Task Force Report (Atlanta, 1968), p. 4.

²³Letter from Dr. Elias Blake, Institute for Services to Education, Washington, D. C. to Jean Fairfax, N.A.A.C.P. Legal Defense and Educational Fund, Inc., April 30, 1971. Also see Southern Regional Education Board, Special Financial Needs, op. cit., p. 7.

²⁴Carnegie Commission, op. cit., pp. 39-40.

institutions must do is also reflected in the fact that in public black colleges, "with 2,000 to 3,999 students, educational and general expenditures were almost as high as in the corresponding white colleges (98%), but that instructional and departmental expenditures per student were only 85% of those in white colleges of similar size."²⁵

In 1966, James Coleman and others undertook a study of the quality of educational opportunity available to black students on the secondary level.²⁶ Chapter Five of that report focused on higher education, an area of importance since black institutions produce most of the teachers of black pupils. An assessment of the quality of education available to those teachers would give a good indication of the possible perpetuation of secondary and elementary inequalities.²⁷

The Coleman Report focused on the following comparative measures:

²⁵ Ibid., p. 39.

²⁶ James Coleman, op. cit.; Coleman's findings were based on secondary sources assembled by the U. S. Office of Education, supplemented by material from McGrath, op. cit.

²⁷ James Coleman, "A Brief Summary of the Coleman Report," in Harvard Educational Review, Equal Educational Opportunity (Cambridge: Harvard University Press, 1969). Coleman's findings on higher education are generally less well known than those for elementary and secondary education; they have been used, however, to structure arguments for integrating state systems of higher education. See, Note, "Affirmative Duty," op. cit., p. 675.

- a. Student-faculty ratio--to assess teaching load
- b. Percent of faculty with earned doctorate
- c. Percent of students from within the state--an indicator of the institutions drawing power; the more students from within the state the less cosmopolitan and diverse the student body is assumed to be.
- d. Faculty salary
- e. Expenditures per student
- f. Room costs
- g. Existence of a Phi Beta Kappa Chapter
- h. AAUP Chapter
- i. Tuition and fees
- j. Library resources
- k. Size of student body
- l. Freshman-senior ratio--measures the holding power of the institution
- m. Freshman-student body ratio

Certainly other variables would be relevant as well, including pattern and source of staff recruitment, conditions of faculty tenure and employment, teaching load, research productivity, staff desegregation, administrative policies, etc. Each of these also reflects the complex sorting process by which a student attends and continues in one school rather than another. Coleman concluded that the data associated with each of these categories demonstrates only some of the grosser aspects of the quality of educational opportunity available to minority students; they are "inappropriate to the task of

explanation." Overall characteristics are stated as follows:

1. Most of the nation's Negro students attend institutions that rank fairly high on the measures of institutional quality used in this report;
2. Negroes constitute a smaller proportion of the student bodies in institutions that rank relatively high on most of the measures, compared to their proportion in institutions that rank relatively low;
3. Any conclusions concerning the problem of resource-input into colleges serving the nation's Negro students will vary grossly depending on the particular resource being considered.²⁸

The report cited two problems which it found to be compelling. One, institutions that educate black students do not compensate their faculties well and are not in a position to attract able staff.²⁹

²⁸Coleman, Equality of Educational Opportunity, op. cit., p. 417.

²⁹Carnegie Commission, op. cit., p. 43; Southern Regional Educational Board, op. cit., p. 9; National Association of State Universities and Land Grant Colleges, Public Negro Colleges, op. cit., table reproduced below:

Average Faculty Salaries (1968-69)

<u>Rank</u>	<u>Public Negro</u>	<u>Public Liberal Arts</u>	<u>Public Univer- sity</u>	<u>Private Univer- sity</u>
Professor	\$12,802	\$15,274	\$17,140	\$19,183
Associate Professor	10,633	12,133	12,864	13,241
Assistant Professor	8,859	10,120	10,562	10,552
Instructor	7,456	8,005	8,052	8,334

Secondly, institutions to which black students turn for an education are "distinctly inept in their capacity to retain their entering students and move them through a normal progression toward a college degree."³⁰ A greater proportion of college resources are expended on students who do not graduate, with appropriate implications for costly process of compensation and remediation which must occur in black institutions.

From the Coleman Report we can get an idea of the distribution of minorities by type of institution and hence, the quality of educational opportunity available to them. "In every region, Negroes are more likely to enter the state college system than the state university."³¹ "Regardless of whether this is due to choice, academic readiness, finances, recruitment, or blind prejudice," the Report says, "the pertinent observation is that a larger proportion of Negroes than of whites receive their college training in institutions that are inferior."³²

Another factor which bears on the quality of an institution is the amount of research that it is able to conduct. Several

³⁰ Coleman, Equality of Educational Opportunity, op. cit., p. 417.

³¹ Ibid., p. 442.

³² Ibid., p. 442; the Report found that in the Great Lakes, Plains and Far West regions, there is a pronounced tendency for public junior college systems to have the unique function of carrying the mission of educating Negro students (pp. 442-443).

enhanced characteristics flow from increased research; student financial aid in the form of research assistantships, faculty prestige from publication and the benefits to classroom instruction from a blend of teaching and ongoing research. We have already seen that black state colleges receive less in research funds than white institutions and even considerably less than do black private institutions.³³

No breakdowns are available to assess comparable amounts of research funds entering black state as opposed to white state institutions.³⁴ A study, however, of the federal research funds from all departments going to all black colleges and universities is suggestive. The Federal Interagency Committee on Education conducted a study of federal agencies and black colleges for fiscal year 1969.³⁵ The study concluded that:

The federal government during fiscal year 1969 provided slightly more than \$4 billion dollars for the support of institutions of higher learning.

³³Commission on Higher Education in the South, *op. cit.*, Table 7. In 1965-66 black public institutions received 1.1% of its total educational and general income from federal government research funds, the comparable figure for black private institutions was 2.4%

³⁴Coleman, however, found that schools with large black enrollments spent less on organized research and that this was especially so in public institutions. Most research money goes to large universities (p. 429).

³⁵Federal Interagency Committee on Education, Federal Agencies and Black Colleges (Washington: Department of Health Education and Welfare, revised January 1971).

The traditionally white colleges and universities received \$3.890 billion of this amount, while the traditionally black colleges received \$122.1 million or three percent.

Since most federal education support programs are designated for graduate research and training, black colleges, like other liberal arts schools generally do not come within their purview.

The preponderance of federal assistance emanated from the Department of Health, Education and Welfare. Five of its agencies provided \$90.2 million or 72 percent of the total support. Of this, the Office of Education provided 64 percent of the total federal funds or \$78.0 million. Yet, 50 percent of this money went for student aid.³⁶

Much closer to the problems of black state institutions is the delineation of federal aid to state institutions through the Department of Agriculture. The Department of Agriculture's support to black state colleges is instructive since many of the black schools are land-grant colleges and universities established pursuant to the First and Second Morrill Acts.³⁷ In fiscal year 1969, the Department granted \$156 million to all land grant universities and colleges. Seventeen black land grant schools and two others received \$607,044 or .4% of the total funds (see Table II).³⁸

The special use of federal funds channeled through state governments to land grant institutions merits a closer look at black land grant institutions. Though originally founded as separate-but-

³⁶ Ibid., p. iv.

³⁷ 44 Stat. 247 and 7 U.S.C. 321.

³⁸ Federal Interagency Committee on Education, op. cit., p. 15.

TABLE II

Funds to Black Land Grant Colleges and Universities
U. S. Department of Agriculture

<u>State</u>	<u>College</u>	<u>Amount</u>
Alabama	Alabama A and M College	\$ 20,396
	Tuskegee (not a land grant college)	181,000
Arkansas	Arkansas, A, M and N College	16,980
Delaware	Delaware State College	12,413
District of Columbia	Fed City College	113,400
Florida	Florida A and M University	14,946
Georgia	Atlanta University (not a land grant college)	5,000
	Fort Valley State College	24,836
Kentucky	Kentucky State College	19,080
Louisiana	Southern University and A and M	35,651
Maryland	Maryland State College	14,231
Mississippi	Alcorn A and M	21,251
Missouri	Lincoln	18,239
North Carolina	North Carolina A and T	23,924
Oklahoma	Langston University	15,956
South Carolina	South Carolina State College	17,143
Tennessee	Tennessee A and I State	12,500
Texas	Prairie View A and M	21,991
Virginia	Virginia State College	18,107

Source: Federal Interagency Committee on Education, Federal Agencies and Black Colleges (1968).

equal institutions, patterns of state aid and the state-federal mix have been ignored by recent studies.³⁹

The Black Land Grant Colleges and Universities

The black land grant colleges were established under the Second Morrill Act of 1890⁴⁰ which provided an annual federal appropriation for the maintenance of colleges founded for the benefit of mechanical and agricultural classes under the First Morrill Act.⁴¹ Under Section 323 of the Supplementary Morrill Act, states were prohibited from using the money to support colleges where admission was based on color or race, but the establishment of separate colleges for white and black students was sanctioned if funds were "equitably divided" by state legislatures.

Statistics of the Department of Health, Education and Welfare generally indicate that despite state control over the allocation of funds under the Supplementary Morrill Acts, the allocation seems to have been equitable. There is language in the Second Morrill Act which implies that the black land grant colleges should have shared equitably in the original endowments for white

³⁹ Neither the Coleman Report nor the Reisman-Jencks study, nor the Carnegie Commission Report focused on the plight of the black land grant colleges. This is a puzzling omission since these institutions with assured federal and state financing probably stand a better chance of long range survival and expansion into new areas of service. See Payne, "Forgotten . . . But Not Gone: The Negro Land Grant Colleges," Civil Rights Digest (Spring 1970).

⁴⁰ 7 U.S.C. 321-326 and 328.

⁴¹ 7 U.S.C. 301-305, 307, 308.

institutions under the First Morrill Act.⁴² But there is no explicit language in the Act which would compel such a result and legal action seems unwarranted because the original endowments are so depleted.⁴³ It does point up our original statement that the black institutions start with cumulative disadvantages.

Most federal money appropriated for the land grant colleges and universities are provided under the Hatch Act of 1887 and the Smith-Lever Act of 1914.⁴⁴ The Hatch Act provided for the establishment of agricultural experimental stations in each state to provide scientific expertise to small farmers who lacked enough capital to pool money for research. Power over the distribution of the funds where two or more land grant institutions existed was given to the state legislatures; that power was later modified by the Adams Act

⁴²"It is the opinion of this office that the Negro institutions which receive a part of the Federal Funds provided under the Morrill Acts and supplementary legislation . . . are governed by the same legal provisions which govern other land grant colleges, including the requirement of the Act of July 2, 1862, that military tactics be taught therein. The fact of segregation itself does not affect the designated institutions' rights and obligations, and Morrill Act funds are specially available only to institutions established in accordance with the conditions of the 1892 agreement. The legislative history and the recorded interpretations of the Acts also reinforce the conclusion that there is no legal basis for a failure to require a substantial course in military tactics to be offered by Negro institutions participating in grant under any or all of the four acts of Congress noted above." Opinion of the General Counsel, Federal Security Agency, July 13, 1949.

⁴³J. Rosenthal and Mack Thompson, *op. cit.*

⁴⁴7 U.S.C. 361 (1887) and 7 U.S.C. 341 (1914).

of 1906, which increased the funding level of the stations and gave the Secretary of Agriculture power to withhold funds upon a showing of abuse. The Department has used this power in several cases,⁴⁵ but never in a situation where racial discrimination was involved.

Enormous disparities exist in the provision of funds under the Hatch Act. Only two historically black institutions were given funds under the Act: Lincoln University and South Carolina State College (see Table III). The Department of Agriculture might be exonerated for its role in the distribution of funds by claiming that funds were really only sufficient to support one institution in each state and that the states were given control over the ultimate distribution of funds.⁴⁶ But, the Morrill Acts did contemplate the establishment of more than one institution in a given state and the Secretary of Agriculture does have a statutory responsibility for seeing that funds are properly used.⁴⁷

⁴⁵ See V. O. Key, Jr., "Withdrawal of Federal Co-operation," The Administration of Federal Grants to the States (1937).

⁴⁶ Rosenthal and Thompson, op. cit.

⁴⁷ "The Secretary of Agriculture is hereby charged with the responsibility for the proper administration of this Act, and is authorized and directed to prescribe such rules and regulations as may be necessary to carry out this provision. It shall be the duty of the Secretary to furnish such advice and assistance as will best promote the purposes of this Act." 7 U.S.C. 361, sec. 7 (1887).

TABLE III

Disbursement of Funds Under the Morrill Acts, the Hatch Act and the Smith-Level Act

State and Institution	First Morrill Act of 1862		Hatch Act of 1887	Supplementary Morrill Act Funds	Smith-Lever Funds
	Endowment and Interest				
Alabama: Al. A & M College Auburn U.	0 - 0 253,500 - 20,280		0 1,455,051	93,467 180,968	0 2,676,761
Arkansas: Ark. AM & N Col. U. of Arkansas	0 - 0 133,000 - 6,633		0 1,226,957	65,280 174,105	0 1,849,736
Delaware: Delaware St. Col. U. of Delaware	0 - 0 84,426 - 2,505		0 434,969	41,537 166,142	0 277,625
Georgia: Ft. Valley St. U. of Georgia	0 - 0 242,202 - 9,838		0 1,471,344	82,576 207,868	0 2,742,412
Florida: Fla. A & M U. U. of Florida	0 - 0 163,365 - 4,885		0 820,331	102,285 212,028	0 1,081,375
Kentucky: Kent St. Col. U. of Kentucky	0 - 0 165,000 - 8,645		0 1,521,557	51,832 230,017	12,824 2,753,106
Louisiana: L.S.U. Southern U.	182,313 - 9,115 0 - 0		1,001,507 0	186,734 87,471	2,260,469 0
Maryland: U. of Maryland U. of Md. St. Col	132,400 - 3,310 0 - 0		571,957 0	237,661 32,844	835,961 0
Mississippi: Alcorn A & M Miss. St. U.	0 - 12,592 98,575 - 5,914		0 1,398,057	122,718 125,951	0 2,809,707
Missouri: Lincoln U. U. of Mo.	0 - 0 601,654 - 28,075		14,804 1,408,654	18,710 280,650	0 2,450,919
N. Carolina: N.C. A & T N.C. State	0 - 0 125,000 - 7,500		0 1,684,157	100,635 204,319	20,301 3,740,500
Oklahoma: Langston U. Oklahoma St. U.	0 - 0 0 - 0		0 954,667	25,222 227,001	0 1,618,803

<u>State and Institution</u>	<u>First Morrill Act of 1862</u>		<u>Hatch Act of 1887</u>	<u>Supplementary Morrill</u> <u>Act Funds</u>	<u>Smith-Lever</u> <u>Funds</u>
	<u>Endowment and Interest</u>				
S. Carolina: S. C. St.	0	- 5,754	51,228	126,754	0
Clemson U.	95,000	- 5,754	1,141,097	126,754	2,025,341
Tennessee: Tenn. A & I St.	0	- 0	0	50,968	0
U. Of Tenn.	400,000	- 13,254	1,474,964	230,576	3,036,267
Texas: Prairie View A & M	0	- 0	0	105,964	0
Texas A & M U.	209,000	- 36,153	1,583,606	317,892	4,143,067
Virginia: V. P. I.	344,312	- 19,696	1,096,874	194,005	2,329,940
Va. State Col.	183,314	- 6,858	0	97,003	117,284

These statistics are from the following source: "Statistics on Condition of Land-Grant Funds - 1969 Report"
U. S. Department of Health, Education and Welfare
Office of Education
Bureau of Higher Education
Washington, D. C. 20202
April 22, 1970

The Smith-Lever Act mandated that federal funds be provided to the land grant institutions for cooperative agricultural extension work with the Department of Agriculture. Again states were given discretion to direct funds where more than one land grant institution exists. Only three black land grant colleges have received money under the Smith-Lever Act and these appropriations have been minimal compared with amounts given to historically white schools (see Table III). Again, the Secretaries of Agriculture have not been without power to correct this misuse of funds.⁴⁸

Several remedies have been suggested, including the pairing of the black and white institutions, political and legal pressure on the Secretary of Agriculture, litigation under Title VI of the Civil Rights Act of 1964 and legislation to provide for an equitable distribution of federal funds under the Hatch Act and the Smith-Lever Act.⁴⁹

The situation of the land-grant colleges and universities points up another way in which studies of the equitable provision of average per pupil appropriations breaks down under closer

⁴⁸"If any portion of the money received by the designated officer of any state for the support and maintenance of co-operative agricultural extension work . . . shall by any action or contingency be diminished or misapplied, it shall be replaced by said state and until so replaced no subsequent appropriation shall be apportioned to said state." 7 U.S.C. 341, sec. 5 (1914).

⁴⁹Rosenthal and Thompson, op. cit., passim.

examination. An assessment of the quality of the black land grant institutions requires comparison with their original mandate and with those white land grant institutions which have developed at their expense. Land grant institutions were to have brought the benefits of classical education to rural adult populations while assisting them in agricultural development. Certainly, black farmers never received the benefits of black institutions in the same way that white farmers have. Black schools have systematically been prevented from extending the same services and benefits to rural black populations and if merged with white institutions, they could be prevented from meeting the new demands of rural economic and social development.⁵⁰

This disparity in the development of the white institutions as compared with their black counterparts is staggering (Table IV). William Payne⁵¹ points out that "A Report of the National Association of State Universities and Land-Grant Colleges shows that sixteen predominately white land-grant institutions receive \$450 million in state appropriations--almost nine times the figure of \$52.3 million received by the Negro land-grant colleges in the same states. It

⁵⁰For an assessment of the mandate of the Department of Agriculture and possible new roles for the land grant institutions with the decline of rural farming, see N. P. Ralston, "Report on Support by USDA for Predominately Negro as Compared to Predominately Non-Negro Institutions of Higher Education," Office of the Secretary, U. S. Department of Agriculture (November, 1969), mimeo.

⁵¹Payne, "Forgotten . . . But Not Gone," op. cit.

TABLE IV

Federal and State Aids to Predominantly White and Negro Land-Grant Colleges

<u>Institutions</u>	<u>1968 Enrollment</u>	<u>Ratio of White to Negro</u>	<u>Fiscal Year 1968, Federal Aid (thousands)</u>	<u>Ratio of White to Negro</u>	<u>1968-70 State Aid (thousands)</u>	<u>Ratio of White to Negro</u>
Auburn U.	14,422		\$ 8,945		\$ 18,161	
Alabama A & M	2,076	6.9:1	851	10.5:1	2,339	7.8:1
U. of Arkansas	11,620		10,804		17,850	
Arkansas AM & N	3,445	3.4:1	1,454	7.4:1	2,690	6.6:1
U. of Delaware	12,810		4,527		11,977	
Delaware State	909	14.1:1	524	8.6:1	1,998	6.0:1
U. of Florida	21,389		21,737		60,708	
Florida A & M	4,508	4.7:1	902	24.1:1	6,693	9.1:1
U. of Georgia	21,182		19,831		41,808	
Ft. Valley State	2,102	10.1:1	830	23.9:1	2,079	20.1:1
U. of Kentucky	24,331		17,922		47,287	
Kentucky State	1,606	15.2:1	390	45.9:1	2,170	21.8:1
Louisiana State U.	31,902		9,374		48,252	
Southern U.	9,978	3.2:1	3,177	2.9:1	9,172	5.3:1
Maryland	*	*	*		*	
Mississippi State	9,786		8,841		10,501	
Alcorn A & M	2,305	4.4:1	651	13.6:1	1,626	6.5:1
U. of Missouri	44,482		21,933		45,611	
Lincoln U.	2,094	21.2:1	266	82.5:1	2,588	17.6:1

<u>Institutions</u>	<u>1968 Enrollment</u>	<u>Ratio of White to Negro</u>	<u>Fiscal Year 1968, Federal Aid (thousands)</u>	<u>Ratio of White to Negro</u>	<u>1968-70 State Aid (thousands)</u>	<u>Ratio of White to Negro</u>
North Carolina State	12,758		\$ 13,916		\$ 32,183	
North Carolina A & T	3,781	3.4:1	1,569	8.9:1	4,087	7.9:1
Oklahoma State	17,381		9,829		19,004	
Langston U.	1,324	13.1:1	610	16.1:1	849	22.4:1
Clemson U.	6,839		5,759		11,154	
South Carolina State	2,081	3.3:1	490	11.8:1	3,944	2.8:1
U. of Tennessee	30,771		23,616		29,561	
Tennessee A & I	4,536	6.8:1	2,082	11.3:1	4,193	7.0:1
Texas A & M	12,867		14,711		37,189	
Prarie View A & M	4,028	3.2:1	2,860	5.1:1	4,536	8.2:1
V.P.I.	10,289		7,597		18,693	
Virginia State	6,894	1.5:1	1,508	5.0:1	3,348	5.6:1
	<u>282,829</u>		\$ <u>199,342</u>		\$ <u>449,939</u>	
TOTALS	51,667	5.5:1	\$ 18,164	8.4:1	\$ 52,317	10.4:1

* Separate figures not available

Source: Civil Rights Digest (Spring, 1970).

must be remembered that enrollment in the predominately white land-grant institutions is only about 5-1/2 times that of the predominately Negro land-grant institutions."⁵²

The extent of the total federal-state aid disparity to black land-grant schools is about \$580 million.⁵³ On a per pupil basis:⁵⁴

	<u>Federal Aid</u>	<u>State Aid</u>
(1) White Land Grant Institutions	\$ 705	\$ 1,591
Black Land Grant Institutions	\$ 325	\$1,013
(2) Total Federal/State Aid Per Pupil		
White Land Grant Institutions	\$2,300	
Black Land Grant Institutions	\$1,365	

⁵²Ibid., p. 15; Payne estimates that just to catch up, a conservative assessment of the needs of the black land-grant colleges would be about \$125 million.

⁵³Ibid., p. 17.

⁵⁴Presidents of the black land-grant colleges estimate their categorical needs as follows:

Student aid	\$ 3.6 million
Fellowships for faculty	1.3 million
Research funds	1.8 million
New facilities	84.8 million
Renovation	30.6 million
Operating funds	1.3 million

Ibid., p. 17.

III. CHARACTERISTICS OF BLACK COLLEGE STUDENTS

Any assessment of the job that black state institutions are required to do must also consider the characteristics of the students who are enrolled or will enroll. We will examine those characteristics which bring black students to black schools and which also work to keep them out of white institutions: family financial status and poor preparation for college. As a general statement, it might be said that a comparison of national norms for entering freshmen shows that black freshmen at black institutions average a C+ grade point average in high school, come from high schools that were about average, had parental income of less than \$4,000 a year and will depend mainly on loans and scholarships to stay in the freshman year. Their white counterparts, however, averaged a B grade in high school, rated academic standards of high school as fairly high, had parental income at \$10,000 to \$14,000 and relied on parental or family aid for financial support during the freshman year.⁵⁵

Without the assumption of all college financing by state and federal governments, ability to enter college and remain will continue to be a function of parental income. The median income for white families in 1968 was \$8,937, while for non-whites it was

⁵⁵ "National Norms for Entering Freshmen for Fall, 1968," American Council of Higher Education Reports (1968).

only \$5,590.⁵⁶ The income distribution for Southern non-white families by type and quality of college, however, shows the following income breakdown for four-year, Southern public accredited institutions;

Under \$4,000	53%
Under \$2,000	21%
\$2,000-\$2,999	16%
\$3,000-\$3,999	16%
\$4,000-\$9,999	41%
\$4,000-\$4,999	13%
\$5,000-\$5,999	10%
\$6,000-\$7,999	11%
\$8,000-\$9,999	7%
\$10,000 and over	6%
Median income	\$3,813 ⁵⁷

These percentages are typically lower than those for all Southern non-white households. Of particular interest is the fact that 75% of students in two-year Southern institutions came from households whose annual income was under \$4,000 a year; the median income of households of students in two-year institutions was \$2,696 a year.⁵⁸

⁵⁶The Social and Economic Status of Negroes in the United States: 1969 (Washington, D. C.: Bureau of Labor Statistics Report No. 375, 1969), p. 16.

⁵⁷Current Population Reports, Consumer Income (Washington, D. C.: Bureau of the Census, 1965), p. 33.

⁵⁸Ibid.

The association between the quality of all four year accredited institutions and median income is predictable: students from households with median income of \$5,308 were concentrated in "good" institutions and students from households with a median income of \$3,303 were concentrated in institutions reated as "poor."⁵⁹

The consequences of these figures is that black students in general will rely more on scholarships, loans and other financial aid to attend college; some will work during school with consequences that are more severe for them than for white students. It could be objected that black students are in this respect no different than white students similarly situated, except that on the average, more black students will be concentrated in these categories than will white students. Black students thus tend to be concentrated in schools with lower tuition rates and with meager resources to stretch over additional instructional costs and student assistance. Fewer will be in high quality state institutions, such as universities and the better four-year senior institutions.

The second characteristic of black students in general is that they will come to college less prepared than white students. A Ford Foundation Report on Minority Access to College states that the poor preparation factor has been widely reported and goes on to simply note that minority group students:

⁵⁹Ibid.

- . do not complete high school in as large numbers, proportionately as all others do
- . tend, in proportionately larger numbers than "all others" to elect or to be counseled into taking non-academic, vocational, and technical programs in high school
- . more often than not live in communities that have primary and secondary school with facilities, faculties, libraries, and cultural resources below the national average, and
- . usually attend schools in which they are effectively segregated from the majority students with whom they later must compete for college entry.⁶⁰

The Carnegie Commission found that "of the Southern Negro high school graduates who were actually enrolled in college in the Fall of 1965, little more than 75 percent were ranked in the top half of their classes in high school, but about the same percentage stood in the bottom half of national test score distribution."⁶¹

The performance of black students on standardized exams has been too widely reported to bear detailed repetition. They all emphasize one point, "Virtually every test that purports to measure educational aptitude or achievement reveals that the mean scores of minority youth is about one standard deviation below the mean of the scores of the rest of the population."⁶²

⁶⁰Fred Crossland, Minority Access to College, op. cit., pp. 62-63, accompanying notes omitted.

⁶¹Carnegie Commission, op. cit., p. 22.

⁶²Crossland, op. cit., p. 58; for an overall assessment of the scores of freshmen in black colleges on the SAT see Reisman and Jencks, op. cit., p. 429; for typical score comparisons between black and white freshmen in Georgia, North Carolina, and Virginia, see pp. 429-431. Essentially the same variation existed in the Armed Forces Qualification Test given to draftees in 1966; see Crossland, op. cit., n. 71.

These scores and distributions are both a reflection of the state of secondary education which black students receive and a barrier to their admission to white public institutions. In Sanders v. Ellington,⁶³ plaintiffs noted that had white institutions in the Nashville, Tennessee area set an entrance requirement of a score of 16 on the American College Testing Program (ACT) composite tests, about 78% of freshmen at black Tennessee A and I would not have been admitted. Mean scores at white institutions ranged from 18.3 to 22.0, while the mean score at Tennessee A and I was 11.9⁶⁴

In seeking admission to college, minority students suffer a serious competitive disadvantage. Colleges and universities may no longer discriminate on the basis of race or color, but the inequities of the larger society force black students into black colleges which have fewer resources to meet their special needs. The expanded resources which must be made available to minority students must cover not only compensation and remediation, but special counseling, smaller class sizes, and special training for teachers and counselors.⁶⁵

⁶³ 288 F. Supp. 937 (M.D. Tenn. 1968).

⁶⁴ Note, "The Affirmative Duty," op. cit., p. 678.

⁶⁵ One of the outstanding credits of black institutions is their early work with compensatory education at the college level . . . work which began before white institutions began positive recruitment efforts. See, Martin Jenkins, Morgan State College: An Adventure in Higher Education (1964); see also, John Egerton, Higher Education for High Risk Students (Atlanta: Southern Education Reporting Service, 1968):

Efforts to provide these types of programs do exist. Morgan State College, a black state liberal arts college in Maryland, is noted for a three tiered tracking system which channels resources to students with low standardized test scores⁶⁶ and more will be said about the beginnings of open enrollment programs at state institutions in New York.⁶⁷

Around 1968, many colleges and universities undertook programs to increase opportunities for black students, at first by focusing recruitment techniques on "poor" high schools and later by adding minority recruiters--professional or student--to their staffs.⁶⁸ These efforts necessarily required a bending of admissions standards, and increased re-allocation of financial aid. The Ford Foundation Report notes that at many private institutions undertaking special recruitment programs "8 or 10 percent of the entering class might consist of minority students, but that they were receiving anywhere from 35 to 50 percent of all the financial aid funds available for freshmen."⁶⁹

⁶⁶ See n. 65, supra.

⁶⁷ See Section V, infra.

⁶⁸ A Ford Foundation Report points out that this effort was not a small one, citing an increase in minority freshmen enrollment in 129 midwestern public and private institutions from 25% to 30% for 1969-70. See W. Willington, "Admission of Minority Students in Midwestern Colleges," (New York: College Entrance Examination Board, May, 1970), cited in Crossland, op. cit., n. 110.

⁶⁹ Ibid., p. 92.

This expanded influx of minority students forced institutions to change in many ways; the procedure for admissions was usually re-examined, probation periods made more flexible, and-- in some cases--more "relevant teaching methods and courses were organized."⁷⁰

⁷⁰Ibid., p. 96.

IV. STANDARDS FOR EQUALITY OF HIGHER EDUCATIONAL OPPORTUNITY

(Scope of Action Required)

The characteristics of black state colleges and of black students in general give us an indication of what the elements should be for a re-organization of state systems of higher education. These elements will be the same whether a particular strategy for equalizing educational opportunity is judicial action requiring evaluation of state plans for reorganizaition by courts, or legislative where groups organize to pressure for opportunities for black students.

The case law on higher education has developed by extrapolation from the Brown⁷¹ cases with a focus on integration as synonymous with equal opportunity and state action as a denial of the Equal Protection Clause of the Fourteenth Amendment. No Supreme Court ruling has been forthcoming on a situation in which segregation (and hence, denial of educational opportunity) is de facto, a product of the supposedly free residential choices of individual families,⁷² or of actions other than state actions.

⁷¹347 U. S. 483 (1954) and 349 U. S. 294 (1955).

⁷²Other theories and remedies have approached the problem of inferior segregated schooling as a result of neighborhood schools and residential segregation by attacking the uneven distribution of state resources to local communities. See Coons, Clune and Sugarman, op. cit.; see also Advisory Commission on Intergovernmental Relations, "Fiscal Balance in the Federal System," 2 Metropolitan Fiscal Disparities (1967) and Advisory Commission on Intergovernmental Relations, "Restoring Fiscal Balance in the Federal System," in Urban American and the Federal System (1969).

We earlier pointed out that one legal theory--based on much the same evidence we considered above--argues through Brown I and II and succeeding secondary cases to assert an affirmative duty beyond mere nondiscriminatory admissions standards to move towards a unitary state system of higher education. Having established that such a duty exists, the authors then proceed to define its minimum scope;

- (1) equalize per pupil expenditures on similar kinds of institutions insofar as they are racially distinguishable;
- (2) make positive efforts to alter present segregated attendance patterns by influencing student choice of colleges and universities through recruiting techniques;
- (3) insure that the administrative staff and faculty of its institutions are desegregated;
- (4) utilize expansions of facilities and new construction to gradually integrate the dual system.⁷³

Each of these standards is addressed to the characteristics we discussed above, but only so far. An equalization of expenditures would bring comparable institutions into parity; it is not clear though that such an equalization would aid the cumulative defects of the land grant colleges and universities which need much more than equal expenditures. The lack of proposals for admissions, financial aid and remediation for black students in white institutions would seem to prevent attainment of the authors' goal: i.e., eradicate lingering effects of past de jure segregation which

⁷³Note, "The Affirmative Duty," op. cit.

inhibit free student choice among institutions of higher learning.⁷⁴

The authors do recognize that in the short run, a lowering of admissions standards will have to occur, as long as black high schools are inferior to white high schools,⁷⁵ yet they seem to see the major task of remediation as belonging to the black institutions. If this is to be the case, black public institutions will require more than just the equalization to the level of similar institutions; they will require a major reallocation of resources to meet the educational need.

The emphasis in the selection of standards on practices rather than on results may be valid; but, procedures designed to recruit black students to white colleges without programs to keep them there will probably result in no expansion of opportunity at all. We will see this more clearly in an analysis of the Maryland Plan for integration submitted to the Department of Health, Education and Welfare.⁷⁶ In short, the focus on integration through

⁷⁴Ibid., p. 683.

⁷⁵College recruiters seeking black high school seniors for white state schools are likely to encounter the same problems that met recruiters from private institutions. "In a series of provocative studies, Doerman estimated the number of high school graduates in groups categorized by both family income and admission test scores. Generally speaking, there are fewer 'high scoring, low income' youth than most journalists and propagandists assumed. Particularly discouraging are figures dealing with black high school graduates." Humphrey Doerman, Crosscurrents in College Admissions, rev. ed. (New York: Teachers College Press, Columbia University, 1970), cited in Crossland, op. cit., n. 73.

⁷⁶See discussion, Section V, infra.

attraction (lower admissions for the blacks in white schools, expansion of facilities in black schools) may lose sight of the goal of integration; and increase inequality of educational opportunity. The proposed standards may be operationally sound, but they are not educationally oriented.

The concept of equality of educational opportunity has proven to be an elusive one, and its relationship to integration even more so. The question is essentially one which discernable variables influence academic achievement and academic success. The Brown cases have been cited as fusing two principles into a notion of equality of educational opportunity; first, that the implicit goals of equality of educational opportunity have to do with results and effects of schools and, second, a legal premise that race as a basis of assignment violates fundamental freedoms.⁷⁷

Measurement of equal educational opportunity might proceed by comparing differences in inputs or resources available to black students as opposed to white students. One would focus on tangible or quantifiable inputs, such as physical condition of buildings, teacher quality, preparation and experience, class size and teacher-pupil ratios, dollars expended per pupil, the variety of curriculum and programs and the size and quality of libraries; or the intangible and non-quantifiable inputs, such as atmosphere of learning, pupil-teacher rapport, sense of community and campus

⁷⁷James Coleman, "The Concept of Educational Opportunity," in Harvard Educational Review, op. cit., p. 17.

involvement. Another approach may adopt a process notion of equality and examine the accessibility of all facilities to all students or the degree of choice in and access to desirable classifications. Finally, we might adopt an outcome equality test, looking for equality of tangible results in average test scores or percentage going into certain occupational or income groups, or percentage continuing education. Or we might look for intangible results such as maximum fulfillment of personal growth, achieving happiness, sense of self-respect and percentage achieving success in societal norms.

The problem with the input standards is that there is little agreement on what impact input resources have on those results listed under output equality; the problem with the output standards is that it is difficult to agree on what outcome is desired and if they did no one knows for sure what to do with inputs and processes to obtain it.

On the secondary level, the Coleman Report suggested that the influential variables in academic success were--in order of importance--characteristics of students' peers, teacher characteristics and other characteristics including per pupil expenditures (which seems to account for very little variation at all).⁷⁸

⁷⁸Coleman, "A Brief Summary of the Coleman Report," op. cit., p. 259; see also, Coleman, et. al., Equality of Educational Opportunity, op. cit.; though the report generated considerable controversy, its conclusions have been borne out by subsequent reanalysis of the data. See U. S. Commission on Civil Rights, Racial Isolation in the Public Schools (Washington, D. C.: U. S. Government Printing Office, 1967); see also, Daniel Moynihan, "Sources of Resistance to the Coleman Report," Harvard Educational Review (Winter, 1968).

Crudely summarized, the closest portion of a child's social environment, his family and fellow students affect his performance the most, while non-social aspects affect it the least. The evolution of the concept of equal educational opportunity, however, leads us to an understanding of the school as having the responsibility for creating achievement in the child; that "the difference in achievement at grade 12 between the average white and the average Negro is, in effect, the degree of inequality of opportunity and the production of that inequality is the responsibility of the school."⁷⁹ For Coleman, proximity to equality of educational opportunity would see a convergence of standardized test score performance for black and white students. Such a convergence would be an average; individual scores might continue to be as far apart as they are now and perhaps even wider. If one accepts this view, proximity will be approached only as school influences come to outweigh family and background influences.⁸⁰

It is not easy to take concepts developed for use on the secondary level and apply them to colleges and universities. An outcome or equality of result oriented standard grates against traditional notions of the purpose of college. Secondary education is compulsory; if the state insists that every child participate,

⁷⁹Coleman, "The Concept of Equality of Educational Opportunity," op. cit., p. 24.

⁸⁰Ibid., p. 24.

it has a greater burden to see that such participation has approximately equal average results for white and black students. A college education, however, has not always been thought of as a democratic commodity. It is admittedly elitist. There are, however, intimations that with the growth of public colleges and universities, higher education will become more universal.⁸¹

There is considerable opposition to this view. The Vice-President, Spiro T. Agnew, has stated that "College, at one time considered a privilege, is considered to be a right today--and is valued less because of that."⁸² The Vice-President spoke of the "disturbing trends in administrative and admissions policies of America's colleges and universities. When decisions begin to represent a definite trend that may drastically depreciate our higher institutions, then all of us have an interest at stake . . . Preparatory and compensatory education do not belong in the university. Students needing special educational services--who do not meet the standards and requirements of higher education should not be encouraged to apply--in the first instance--to such institutions . . . A firm commitment to equality of educational opportunity must not result in the dilution of that opportunity.

⁸¹Richard Ferrin, Barriers to Universal Higher Education (New York: College Entrance Examination Board, 1970); Carnegie Commission on Higher Education, A Chance to Learn: An Action Agenda for Equal Opportunity in Higher Education (New York: McGraw-Hill, 1970); Milton Schwebel, Who Can be Educated? (New York: Grove Press, 1968); Warren W. Willingham, Free Access Higher Education (New York: College Entrance Examination Board, 1970).

⁸²Spiro T. Agnew, speaking at Des Moines, Iowa, on April 13, 1970, cited in Crossland, op. cit., n. 115.

For colleges and universities to deliberately draw into a high academic environment students who are unqualified intellectually or whom the primary and secondary schools have conspicuously failed to prepare is to create hopes which are doomed to disappointment."⁸³

The view that we are urging, nonetheless, is that the courts will have to adopt a Hobson strict standards of review if integration is to mean equal educational opportunity; that, in addition to the affirmative duty rule, and its scope outlined above, the courts must adopt an equal outcome standard of review. This will mean increased financial aid, different admissions standards more closely tailored to the motivations and promises of minority youth, remedial and compensatory programs to overcome basic deficiencies and specially trained counselors and instructors.

The states are not without responsibility for the poor preparation of black students for college as the Vice-President noted in his speech. Deficiencies are allowed to accumulate in black and poor high schools and when those same students seek state college admission they are grouped in black and inferior institutions for reasons which the state helped to create.

The states are apparently in retreat even from the old discredited separate-but-equal standard; the state land grant colleges and universities were never in a competitive position.

⁸³
Ibid.

with their white counterparts. States also seem to be decreasing even the role that black institutions can play in compensatory education by merging or otherwise blocking their continued existence as the important providers of educational opportunity. Three have been annexed by larger and older white public universities (Maryland State, Prarie View A and M, and Arkansas A, M and N College). Three others now have a majority of white students (Bluefield State, West Virginia State, Lincoln University). Three others have white enrollments of 30 to 40 percent and will likely "tip" in the next few years. Fourteen others now face direct competition from white state institutions in the same communities (Alabama A and M, Alabama State, Florida A and M, Albany State, Savannah State, Grambling State, Southern University, Morgan State, Coppin State, North Carolina A and T, Tennessee State University, Texas Southern, Norfolk State and Virginia State College).⁸⁴ If no programs are instituted to accommodate the expected rise in black students in the South, more and more students will find their access to higher education blocked through state policies.

States have consistently refused to upgrade black institutions, a step which would attract more white students to those campuses. Morgan State College was bypassed in an effort to create an enlarged urban university. Instead, the State of Maryland created a new

⁸⁴ John Egerton, The Public Black Colleges, op. cit., p. 30.

branch of the University of Maryland in the Baltimore suburbs; the campus is heavily oriented towards the physical sciences, increasing employment opportunities for white state students in growing Baltimore County industries. The Texas legislature chose to take over the previously private University of Houston instead of expanding black Texas Southern University.⁸⁵ Black enrollment at Tennessee State has been decreasing over the past years as a result of increases in out of state tuition charges and competition from the Nashville branch of the University of Tennessee.⁸⁶

Regardless of intent, regardless of "non-discriminatory admissions standards," state practices such as these deny black students an equal opportunity for higher education. "Access to higher education is essentially a social process deeply involved with the society's entire cultural pattern and system of values."⁸⁷

Courts may be loathe to adopt such a stringent standard of review in an area considered beyond their competence. The values

⁸⁵Reisman and Jencks, op. cit., p. 470.

⁸⁶The Department of Health, Education and Welfare contributed funds for the construction of the University of Tennessee Nashville Center, then threatened to cut off funds to the state if it did not eliminate segregation in its public institutions. For detailed assessments of the situation in Tennessee and a case study of Florida, see John Egerton, The Black Public Colleges, op. cit.

⁸⁷B. Alden Thresher, College Admissions and the Public Interest (New York: College Entrance Examination Board, 1966), p. 3.

of free choice, development of different campuses for different academic reasons and the development of an educational elite may give courts more reasons for nonaction than on the secondary level. But another important aspect of the Hobson case is that the protection of minorities is given a favored position by court interpretations of the constitution, so that, where the state has failed to fulfill its responsibility even after moving to a non-discriminatory system, a more stringent standard must apply. In Hobson, it made no difference that the tracking system used in the public schools was instituted for supposedly educational reasons; it was enough for the court that such policies had the effect of continuing old patterns of discriminating against black students. And the lesson of the long history of state recalcitrance after the Brown decision should impress upon the courts the necessity for strong standards of review and continuing supervision.⁸⁸

The crux of this justification for a strict standard of review is that the state is deeply involved in perpetuating past injustices.

⁸⁸One contrary argument would be that we cannot compensate for deficiencies in intelligence based on heredity. See A. R. Jensen, "How Much Can We Boost I. Q. and Scholastic Achievement?" 39 Harvard Ed. Rev. 1 (1969). For a contrary view, see A. Morrison and D. McIntyre, Schools and Socialization (Baltimore: Penguin Books, 1971). The conclusion of Morrison and McIntyre is that while a mix of heredity and environmental factors are involved, their relative importance is still in doubt. They go on to say "It seems to us that a scientific and educationally fruitful attitude is to hypothesize that apparent environmental influences are in fact what they seem; deliberate and informed attempts can then be made to alter characteristics of the environment inimicable to success and only when all such attempts have failed should the hypothesis be rejected." (p. 20).

Its lack of action in removing barriers to the fulfillment of its duty to black students may not be strong enough to qualify as "state action" in the sense that passage of a discriminatory state law is "an illegitimate classification devoid of valid legislative purpose." But it is state action in the sense that other policies of the state perpetuate the same result: i.e., failure to correct cumulative defects on the secondary level, state tax policies with respect to funds going to black secondary institutions, failure to change procedure under the state's control to modify past practices, failure to overcome cumulative deficiencies in black colleges, collusion with the federal government in maintaining inequalities in the land grant institutions, and so on. There are even intimations from experience in California that the financing of state systems of higher education may in fact shift resources from the poor of the state to the children of the affluent middle classes who use the state service.⁸⁹ Sumtotally, all of these policies are just as effective as "state action" unless their reorientation leads away from the perpetuation of old forms of de jure segregation.⁹⁰

⁸⁹See W. Hansen and B. Weisbrod, Benefits, Costs and Finances of Public Higher Education (Chicago: Markham Publishing Co., 1969). The notion of a redistribution of income from lower to higher income as been challenged. Using Hansen and Weisbrod figures, Pechmon concluded that their analysis does not begin to demonstrate the distributional effects. See, contra, Joseph Pechman, "The Distributional Effects of Public Higher Education in California," 5 Journal of Human Resources 361 (1969).

⁹⁰Coons, Clune and Sugarman have concluded that an attack on state action through the concept of "legislative purpose" is useless in the secondary school finance cases. Coons, Clune and Sugarman, op. cit., p. 346.

State implication in perpetuating the separate system of land grant colleges and universities is even more acute. No supplementary Morrill Act funds were to have been provided to states where admission to state schools was based on race. When, however, states established separate-but-equal institutions, permission for the release of funds was granted, provided that there was an "equitable" division of funds among the competing institutions. Debates over the provision of financial assistance under the Hatch Act and the Smith-Lever Act characteristically involved Northern concern that Southern states would not permit an equitable division,⁹¹ but would allow the white institutions to grow at the expense of the black ones. As late as 1934, no agricultural experimental station had been associated with a black institution⁹² and black institutions were prevented from performing their functions for black rural populations. Indeed, had black institutions been permitted to function in nutrition, child care, agriculture, adult education, housing, family services, cooperatives, etc., states would not now be haunted by the specter of rural poverty with its effects on the access of black children to higher education. Court supervision of the re-organization of the black land grant institutions will have

⁹¹See, for example, the debate between congressmen in 21 Cong. Rec. 6349 (1890); see also amendment (which subsequently failed to pass) submitted by Senator Wesley Jones, 51 Cong. Rec. 2929 (1914).

⁹²John Davis, Land Grant Colleges for Negroes (West Virginia State College Bulletin, No. 6, April, 1934), p. 28.

to be as stringent, if not more so, than its supervision of the equalization of other institutions.

V. STATE PLANNING FOR EQUALITY OF EDUCATIONAL OPPORTUNITY

With an assessment of all variables thought to affect academic achievement, with an understanding of the barriers that keep black students out of white state institutions and locked into inadequate black schools, and with an understanding of the state's affirmative duty to move towards a unitary system of public higher education, we have definite measure for assessing the quality of educational opportunity available in state systems. Yet, several problems remain. Given these measures, how can a state operationally move towards equality of educational opportunity? How will re-organized systems re-allocate their resources? What will be the effective standard where systems are divided into university, senior colleges and junior colleges? How can compensation and recruitment be jelled into a workable system which permits free choice of academic institutions? What will be the numerical baseline to which progress in increasing equality for black students can be geared? What about schools where students, faculty, and alumni insist on maintaining a separate racial identity?

The present dissatisfaction with progress towards unitary systems of elementary and secondary public education have resulted from court failure to resolve these types of problems. Black leaders have noted that integration has meant the loss of names of black leaders from school complexes, loss of trophies, loss of

school mascots, songs and traditions, replacement of black principals and teachers, the imposition of dress and discipline codes designed to keep black students "in their place,"--in short a loss of black identity, pride and authority figures.⁹³ And a more serious result has been the re-segregation of black students into "all black classes" through tracking, testing, and forms of not-so-subtle discrimination.⁹⁴

Many of these problems will be avoided on the college and university level simply because forced bussing and the drawing of attendance zones are more difficult, given valid state claims to maintenance of special purpose campuses. Others can be avoided by careful evaluation of state plans and an insistence on preservation of black uniqueness and claims to a valid place in state educational history. Rather than reorganizations which tend to deprecate segregated institutions, states must find ways to acknowledge and build on the special dignity black schools have provided in oppression.

We will approach these problems by examining two states which have undertaken the formulation of plans for increasing educational opportunity in their higher educational systems.

⁹³The Status of School Desegregation in the South, 1970, A Report by the American Friends Service Committee, Delta Ministry of the National Council of Churches; Lawyers Committee for Civil Rights Under Law; NAACP Legal Defense and Educational Fund, Inc.; Lawyers Constitutional Defense Committee; and the Washington Research Project. (1970), pp. 52-97.

⁹⁴Ibid., pp. 10-49.

A. H.E.W. and the Maryland Plan for Integration

In theory, at least, the Department of Health, Education and Welfare accepts the need for affirmative action by states beyond a simple announcement that all schools in the system are open regardless of race.⁹⁵ It also recognizes that black students need special services if integration is to work without large numbers of black students being pushed out of higher education altogether.⁹⁶ The extent, however, of re-organization necessary to result in full integration and the total cost of such a plan seems lost on both the Department and the respective states.⁹⁷

In August, 1967, H.E.W. began requiring that states submit compliance reports on the extent of integration throughout their systems.⁹⁸ Such reports were to be filed every two years, supplemented by visits from Department examiners. The original compliance report was very complete, inquiring into the racial composition of all levels

⁹⁵Memorandum of Law from Edwin Yourman, Assistant General Counsel (Civil Rights) to St. John Barrett, Deputy General Counsel, Department of Health, Education and Welfare, April 16, 1970.

⁹⁶Ibid., p. 15; the Department's stance is based on the Southern Regional Education Board Report, op. cit., Memorandum on meeting with Bert Taylor, H.E.W., from Virginia Frank to Bruce Hubbard, February 21, 1971.

⁹⁷See, for example, the amounts black land grant college presidents estimate that they will need to equalize their institutions, n. 54, infra.

⁹⁸H.E.W. required such plans from Pennsylvania, Maryland, Mississippi, Louisiana, and Arkansas. N. Y. Times, March 11, 1969, at 22, col. 5.

of the student body, percentage of students receiving financial aid, percentage of school budget allocated to financial aid, integration in college owned housing, recruitment programs for minority students, admissions requirements, availability of facilities to parents and students, amount of funds earmarked for minority students and school policies on placement and off-campus housing.⁹⁹

The change in national administration, however, resulted in a change in the enforcement effort. While the old compliance reports might have formed a reasonable basis for judging state systems, the new compliance reports issued under the Nixon Administration require only a statement of full-time students by race and the undergraduate and graduate levels of these students.¹⁰⁰

Most states which have dual systems have not submitted plans for the reorganization of their systems, and of the few that

⁹⁹Office of Civil Rights, United States Department of Health, Education and Welfare, Compliance Report of Institutions of Higher Education under Title VI of the Civil Rights Act of 1964 (1967). Approximately 2,300 institutions were requested to complete these forms. Surveys were conducted in 1968 and 1970. Compliance interviews were conducted at 548 institutions; where violation of Title VI were discovered, letters were sent to college presidents setting forth the Department's recommendation. Four hundred and twenty-six institutions have agreed to take the recommended action; of the remaining 122, H.E.W. is attempting to resolve compliance with 32. A final effort was made to secure compliance with Louisiana in February, 1971. Affidavit from Adams v. Richardson, submitted February, 1971.

¹⁰⁰Office of Civil Rights, U. S. Department of Health, Education and Welfare, Compliance Report of Institutions of Higher Education under Title VI of the Civil Rights Act of 1964 (Fall 1970).

have, no plans have yet been approved.¹⁰¹ The policy shift accompanied the removal of Solomon Arbeiter--a vigorous advocate of integration as head of the Compliance Section of the Department-- and the installation of his replacement, J. Stanley Pottinger. With these changes it is unlikely that H.E.W. will use its power over federal funds to state systems to encourage a change in state organization without protracted litigation.

¹⁰¹The following states submitted plans for the disestablishment of their dual systems:

1. Arkansas -- submitted a short memorandum from Governor Winthrop Rockefeller which is notable for its nonspecificity; in no sense was the memorandum sufficient to insure compliance in the near future. Plan of Inter-Institutional Committees, Letter from Governor Winthrop Rockefeller to H.E.W., October, 1969.
2. Pennsylvania -- proposed a magnet concept of integration; suggested pairing Cheyney State with Winchester State; proposed increases in minority group students, faculty, financial aid, and representation on boards of trustees. Letter from Leon Panetta, H.E.W. to Honorable David Kurtzman, Superintendent of Public Instruction, State Department of Public Information, Harrisburg, Pennsylvania; also, The Pennsylvania Plan to Meet the H.E.W. Desegregation Order (November 26, 1969).
3. Virginia -- proposed non-discriminatory statement in college publications; pairing of Richard Bland and Virginia State and black private Hampton Institute with the University of Virginia.
4. North Carolina -- proposed a plan for adding black state colleges; will appropriate one million dollars over two years; no plan for the creation of a unitary system, North Carolina Board of Higher Education, "Efforts to Improve State-Supported Traditionally Negro Colleges," (November 24, 1967).
5. Louisiana -- failed to file compliance reports or plan.

The Maryland Plan for achieving a more representative racial balance was the most comprehensive submitted to H.E.W.¹⁰² In 1964-65 almost no progress towards integration had been made in Maryland higher education; white schools were 2% black and "other race" students in black schools were 3% of total enrollment. By 1970-71, black students had established footholds in all of the white schools in the system, but whites had made more threatening inroads into the black schools. White schools were 4% black, but black schools are now 20% white. White school faculty were 1-11% black, but black school faculty were 27-47% white.

The Maryland system is organized into three tiers, each with a separate governing board. At the top of the system is the University of Maryland, the state's land grant university. A formerly black land grant college, Maryland State has been merged with the university to become its Eastern Shore Branch; it still has a black president and a majority of black students. The university has three other campuses: one at College Park (white; enrollment 32,000), one in Baltimore City which includes the graduate schools of medicine and dentistry (white; enrollment 3,100)

¹⁰²State of Maryland Plan for Achieving a More Representative Racial Balance Among the Four-Year Public Institutions of Higher Education (Annapolis, Maryland, 1970). The accompanying section was adapted from Douglas Cassell, Integration in Maryland Public Higher Education: A Case Study with Proposals for Reorganization (April, 1971), footnotes omitted, prepared as part of the Harvard Law School-Massachusetts Institute of Technology Joint Student Project on State Resource Allocation to Black State Colleges (April, 1971).

and a new campus in Baltimore County (white; enrollment 3,000). Projected enrollment for newly acquired Maryland State will be 2,000 students. All are under the jurisdiction of the Board of Regents.

Seven four-year senior colleges are under the jurisdiction of the Board of Trustees of the State Colleges: Towson State (white; enrollment 9,900), Frostburg State (white; 2,300), Salisbury State (white; enrollment 1,600), Morgan State (black; enrollment 5,100), Bowie State (black; 2,300), Coppin State (black; enrollment 1,600) and projected St. Mary's (white; projected enrollment of 800 in 1971). The final tier consists of community colleges operated jointly by the state and its locational county. Of the fourteen state community colleges, one--Community College of Baltimore City--serves the black population of urban Baltimore.¹⁰³

The original Maryland Plan recognized that "half-way" measures would no longer suffice, since desegregation had not produced substantial integration. The plan proposed:

a. Specialization of curricula

¹⁰³Discussion herein based on Deborah Parks, "Maryland Higher Education--Comparative Analysis of Expenditures in State Supported Colleges," and John Sherman, "Disparities in State Resource Allocation: An Analysis of State Budgeting Procedures with Specific Proposals for the Maryland System of Higher Education," and--tangentially--Gregory Ricks, "Compensatory Programs and Open Enrollment: The Higher Education Opportunity Program, New York" all prepared as part of the Harvard Law School-M.I.T. Joint Student Project, op. cit.

- b. Course and faculty exchange through inter-institutional agreements, and
- c. Deliberate and persistent recruitment.

At the same time, however, admissions to the colleges were to continue to be based on grades and standardized test scores. State scholarships were to be awarded only on the basis of SAT scores and no special plans for financial aid to black students were proposed.¹⁰⁴ The official policy--in effect--favored passive nondiscrimination.

H.E.W. criticized the plan, asserting that it (a) lacked uniformity and coordination among the levels of instruction, (b) involved action only by individual institutions, (c) was more in the nature of a pilot project than a re-organization and (d) was vague and noncommittal. H.E.W. insisted on the elimination of the racial identifiability of all institutions within the state college system, but sanctioned a proposal to merge all colleges in the Baltimore area (white Towson, black Coppin and black Morgan) into a single urban university.

H.E.W. further suggested that Maryland specialize all colleges in the Baltimore area, leaving no duplication of curricula; the same specialization and non-duplication for Maryland State and Salisbury; no duplication of curricula at the new Baltimore County branch of the University of Maryland, Morgan and Coppin; allow students to

¹⁰⁴The discussion of the importance of black college student scores on standardized exams, Section III, infra.

transfer for up to three full semesters of course work at another school; institute an open enrollment plan for graduates of Morgan at the University of Maryland professional schools, and extend the proposed state college faculty exchange program to the University of Maryland.

In response to H.E.W., Maryland indicated in a new plan that it would follow H.E.W.'s suggestion of non-duplication to force integration, but with the following effect. Only single programs rather than entire curricula would be affected, and then, only one way: black students must attend white schools, while whites may attend black schools. Maryland said "no" to the open enrollment plan for Morgan graduates, and offered one small faculty exchange program.

The state did offer several other steps. All white schools, except Frostburg, reserved less than 5% of their entering class for "high risk" students or discounted entering scores for black students who were otherwise well recommended. "Other-race" recruiters and "other-race" counselors were placed at each campus of the University and at each state college. "Other-race" financial aid was also instituted: \$100,000 for 1970-71 in the state colleges and twenty undergraduate scholarships and forty teaching assistantships were provided at the University exclusively for black students. There is also a program at College Park to accommodate eighty-two high risk students in 1969-70 and one hundred and sixty in 1970-71, 90% of them black. Black studies courses and programs,

human relations programs (for combatting overt discrimination), and housing and campus activities ("feel-at-home" programs) were also areas of attention.

The plan, as it now stands in the process of negotiation, has many shortcomings despite its good qualities. It certainly goes beyond the present legal requirements as suggested in the Yale plan,¹⁰⁵ but serves to point up some of the problems we raised earlier in our discussion of the appropriate standard of equal educational opportunity.

Despite "good will" intentions, white colleges may not be able to absorb a sufficient number of black students to offset the whitening of black schools over the next twenty years. White students already constitute twenty percent of the enrollment of black schools and Bowie is expected to "tip" in the next few years. Black students only reluctantly attend white schools, even if they pass the admissions requirements, and white institutions will not be able to retain enough black students because of the high cost associated with their retention. And as long as the Master Plan's "Predictive Success Index" governs admissions not enough black students will qualify through the SAT for white school attraction.

Moreover, the state fails to use capital expansion plans to promote integration and fails to conceive of compensatory

¹⁰⁵See description of Yale Plan, Section IV, infra.

programs on a large enough scale to promote integration.

Both the Maryland Plan and H.E.W.'s Plan share this characteristic. They are so single-mindedly focused on integration that they overlook its theoretical basis; equality of educational opportunity. Even in a perfectly integrated system, disadvantaged students will not attain equality without an "equality of outcome" measure. Maryland's Plan would result in very little integration; while H.E.W.'s Plan would result in more integration, but a tracking of black students to the lowest level in the system.

Maryland's compensatory programs are offered in such a way as to direct the most disadvantaged students to the most disadvantaged schools. Under the Master Plan "uncertain and marginal" students are tracked to the community colleges. The black state colleges as they presently exist are denied funds for remediation and compensation because such programs belong on the junior college level. The effect on black students would be a denial of opportunity, since more black students than whites will be tracked into the two year terminal programs in the junior colleges.¹⁰⁶

This aspect of the Maryland Plan bears disturbing similarities to the tracking system overturned by the Hobson court. While Judge Wright did not declare all tracking systems void, he did raise provocative questions which are applicable here. Three tiered

¹⁰⁶The North Carolina Plan also contained elements which indicated a shift of black students to the junior colleges in the system, see n. 101, infra.

systems of higher education ought to be examined--where black students are concerned--very carefully. The court should want to know the manner of their assignment to junior colleges, how much free election is balanced against counseling, how many students transfer out of junior colleges and continue on to senior college degrees, and it should want to inquire into the types of occupations and income levels students enter from two year programs. The extension of junior colleges may meet the growing demand by black students for a college experience, but courts should be careful to examine the rigidity of the tracks themselves.

Several suggestions might be made to improve the Maryland Plan. The state might adopt an equalization by level approach, raising expenditures per pupil at Maryland State to the level of the University of which it is a part and could equalize Bowie, Coppin and Morgan to the level of Towson State. Analysis of budgeting for capital expenditures in the Maryland system shows that money for new construction goes to white institutions while funds for re-making and re-doing characteristically go to black institutions.¹⁰⁷

The state could also gear its percentages of black student recruitment to the black population in the state. This would require that the overall integration of all three levels be set at 18%, but not necessarily of each individual school. Similarly, to

¹⁰⁷ Deborah Parks, op. cit.

integrate the junior colleges, it could halt expansion of community colleges where the percentage of black students within commuting range is less than 18% until the overall percentage of black students in the junior colleges reaches 18%. This would mean an expansion in opportunity on the junior college level for the black urban population of Baltimore City.

To attract and retain black students at white schools it could introduce a variant of the "open enrollment" plan instituted in New York State. Both recruitment and retention could then be co-ordinated for the entire system. If it is clear, however, that the rest of the system will not integrate, construction and expansion at all institutions would be halted in order to expand access of black students in Baltimore to university level instruction. This could be accomplished by either a variant of the consolidation of the four-year colleges located in Baltimore, or by the expansion of the departments of Morgan State.

These procedures would have the following effect: integration without an accompanying decrease in educational opportunity available to black students.

B. New York: The Higher Education Opportunity Program (HEOP)

Because of black and Puerto Rican pressure for change, New York State sought to increase educational opportunity for the state's minorities in 1966. The original program--the Search for Education, Elevation and Knowledge (SEEK) was instituted at the City University of New York and later an enlarged program--The Higher Education Opportunity Program (HELP) was extended to the State University of New York.¹⁰⁸

The HEOP program exists in addition to the regular academic programs of the universities in the system and no funds may be expended to support regular university offerings. The program covers:

1. Special testing, counseling and guidance services for screening potential enrollees
2. Remedial courses and summer classes
3. Special tutoring, counseling and guidance service, and
4. Supplementary financial assistance, including stipends and books.

Students are selected for participation in the program if they have completed the requirements for a high school degree, or equivalent and they show capacity to do college work. All of the activities listed above are designed to keep them in school and move them in

¹⁰⁸1077 New York Stat. 6541 (1969); all following statistics taken from Human Affairs Research Center, New York State Higher Education Opportunity Programs (New York, June, 1970).

an orderly fashion towards a college degree.

Individual institutions participate in the program by requesting grants-in-aid from the State of New York. Ninety-nine institutions--both public and private--have shared ten million dollars appropriated for the program. Some of these special programs were operated by consortiums of institutions. The bulk of the recipients were not state institutions; only eight units of SUNY, five units of CUNY and nine community colleges received funds from the program. These schools served over 8,500 students in their first year of operation under the program. The average amount each student received was between 500 and 600 dollars.

The greatest percentage of funds under the program are spent on stipends for students, 36.9%. Other percentages were: counseling (20.6%), central administration (11.8%), tutoring (11.0%), credit instruction (10.4%), non-credit instruction and remediation (8.6%), and travel (0.7%).

Most of the students reached by the program were black; Puerto Ricans accounted for about 13%, while white students were 23%. The students were primarily female and most (87% came from households with incomes below \$7,000 per year; only about 11% came from families whose income was entirely from social welfare.¹⁰⁹

¹⁰⁹In New York, approximately 65% of students with family incomes under \$3,700 attend college, compared with 89% of those from families with incomes over \$15,000, New York Times, May 11, 1971.

Two thirds of the students enrolled in the program are taking normal or greater than normal course loads. About one third are taking courses at less than normal loads. Generally, students do not work and financial aid funds are provided so that they can concentrate on full-time study.

The HEOP program demonstrates that it is possible to attract and retain minority students in integrated setting. The cost is high (about \$600/pupil), but with appropriate remediation and counseling and with the burden of full-time employment lifted, they will pursue normal college careers. A study of the system shows that the retention rate in all institutions was 93%. Males generally have a lower retention rate, black students an average retention rate, Puerto Ricans a less than average rate and white students a higher than average rate. Working also affects the students capacity to stay in the system--those who do not work have higher retention rates than those who do--as does the home environment and professional level of the father.

The HEOP program has been successful in substantially quieting the fears of opponents to the "open enrollment system."¹¹⁰ Its initial

¹¹⁰An increase in college bound high school seniors is attributed to the program, New York Times, May 11, 1971; the new chancellor for the state system, Dr. Robert Kibbee, indicated confidence that the academic quality of the state system will be maintained under the open enrollment program. Dr. Kibbee stated, "We have to give students who need help as many extra things as possible, but we also have to insist that they perform. The quality of a university is measured more by the kind of student it turns out than the kind it takes in." New York Times, July 28, 1971.

successes should suggest a model to state seeking to end the dual nature of their higher educational systems, since it provides a centralized processing mechanism for the introduction of minority students into the school system. Under the plan freedom of choice of campus is still maintained because students apply directly to the colleges for admission.

The program is not without its disadvantages. The students in HEOP only constitute about 3% of the total school enrollment in New York State, a figure far below the representation of minority population in the state. It is also costly, and requires a major commitment of faculty and counseling personnel as well as time spent in tutorials. Yet, this is the price for preventing the segregation of college students into definable tracks which might stigmatize students aided by the program.

The feature, however, which should make it most attractive to state governments, is that unlike any of the plans of states for the disestablishment of dual systems, it is relatively uncomplicated. There are few problems of pairing or nonduplication of courses and it could be used in systems where there are identifiable black institutions to attract black students to white institutions. At the same time, other state policies could be equalizing the black institutions to the point where they were strong enough to attract white students on the strength of their curricula. In specific instances, however, this would still mean expanding the course offering of black schools by eliminating duplicating courses in white schools.

VI. CONCLUSION: REASSESSING THE FUNCTION OF HIGHER EDUCATION

Either the Maryland Plan, as amended with our suggestions, or the Higher Education Opportunity Program of New York State require a reassessment of the function of higher education and a major commitment of funds to that redefinition. This reassessment is likely to be the focus of a prolonged struggle for equality of educational opportunity since the notion that compensation may be required to overcome past deficiencies is not one that is widely accepted. State governments may be interested in improving black colleges and universities, but have not demonstrated a commitment to either equilization or expansion of educational opportunity to black students.

Nowhere is this more keenly demonstrated than in the way in which states budget and plan for higher education. The process of determining which schools in the system get how much money can be a highly political process. A state budget director can use a line item veto to redirect funds from one institution to another and the process of determining capital expenditures can be used to reward particular institutions as well as certain sections of the state for past political favors.

To rationalize this process, some states introduced a system of formula financing which focuses on the similarities of functions .

in institutions.¹¹¹ With formula financing all costs, except capital expenditures, are determined as a fixed percentage of a base cost, usually instruction. The base cost of instruction is established by arriving at an estimate of future enrollment which is then multiplied times the number of faculty required and the whole figure extrapolated from an average figure for faculty salary. The system of budgeting emphasizes the similarities of institutions and not their uniquenesses.

This process may seem fair and equitable, but in several ways it may work against black state colleges and black students. First, we have seen that black state colleges are unique in that they must absorb a larger percentage of their costs in student financial aid and student services. Further, they receive less from gifts and sponsored research than do comparable white institutions. Finally, students in black institutions will require more assistance in compensation, tutoring and remediation than will their white counterparts. Seemingly, these would justify a shift in resources from institutions of comparable size to meet the need of black students--a response similar to the one urged on the courts by Coons, Clune and Sugarman on the secondary level. Expenditures should be based on need and resources should be channeled towards needs.

¹¹¹James Miller, State Budgeting for Higher Education: Use of Formulas and Cost Analysis (Institute of Public Administration, University of Michigan, 1964).

In addition, formula budgeting is only part of the process. Since the system of higher education may be a potent political weapon, funds for black state institutions may be cut even further when budgets must be submitted to budget directors, hostile governors and legislatures.

There are considerations which lead us to suggest that a system of program budgeting might be more favorable to black institutions and black students than the present system. First, program budgeting requires a state or corporate entity to rationalize its goals; goals may be thought of as major decision points in a network of possible expenditures.¹¹² In a replanned state system, equality of educational opportunity or--alternatively--compensatory programs might be thought of as an important decision point. Secondly, states would thus have to come to terms with the input-output problems we spoke of earlier; i.e., what is it we rationally wish to accomplish in assuring equality of education? Convergence on an average basis of test scores? Occupational choices? Starting salaries? And how are those outputs to be matched with appropriate inputs? What are the factors under the state's control which might be influenced in arriving at an equality of outcome standard: Length of day in school, financial aid, tutorials?

¹¹² Harry Williams, Planning for Effective Resource Allocation in Universities (Washington: American Council on Education, 1966); for generalized critiques of program budgeting, see F. Mosher, "Limitations and Problems of PPBS in the States," *Public Administration Review* (March/April, 1969) and A. Wildavsky, "Rescuing Policy Analysis from PPBS," *Public Administration Review* (March/April, 1969).

These types of questions arise more naturally under program budgeting, since a state must decide what its system exists for and begin to think about its purposes and functions. But it is not that easy. Budgeting on a programmatic basis with compensatory education as one of its decision points would point to the areas where state resources must be concentrated to fulfill stated goals. This might be very beneficial to black colleges in state systems which were reasonably committed to equality of educational opportunity or if black students continued to be concentrated in a "decision point" in the system; namely, all black schools where resources could easily be diverted. But, it is not clear how program budgeting would work in an integrated system where black students are dispersed throughout the state's schools and administrators were hostile to the notion of compensatory education. Program budgeting could just as easily be used to justify increased spending on brighter students for enriched programs. Such an extreme case might constitute a clear denial of equal protection, but borderline cases would be harder to delineate.

Finally, it is unlikely that a court would order a state system under court scrutiny to institute a PPBS system. There is another value to PPBS here, however. It could be presented to the court by prospective plaintiffs for heuristic purposes. It would point up the need for states to plan with the needs of all its citizens in mind and to budget to overcome cumulative deficiencies

on a continuous, programatic basis, rather than on the single shot catch-up basis it now uses for black institutions. This is one of the most pressing needs of black colleges and students, an assurance that a state is committed to equality of educational opportunity as demonstrated by a steady, reliable flow of funds.

At the least, then, the institution of program budgeting or the training of state planners and administrators in program budgeting could begin a process of continuous reassessment of how the state serves its citizens and how goals may be more clearly related to resources.

In summary, integration or the expansion of equality of educational opportunity cannot be insured for black students without a commitment to outcome equality. The state bears a responsibility for deficiencies which black state college students bring to higher education, and hence, a responsibility to allocate its resources to overcome those deficiencies. Equality of educational opportunity will require equalization of those institutions that now serve black students as well as an expansion of opportunity for black students in white institutions through increased recruitment and policies designed to retain them in a normal progression towards a college degree.

APPENDIX A

THE BLACK STATE COLLEGES AND UNIVERSITIES

Public Four Year Colleges and Universities Founded for Negroes
in the United States, 1969

<u>Location</u>	<u>Institution</u>	<u>Year Founded</u>	<u>Level</u>	<u>Enroll- ment</u>
Alabama				
Normal	Alabama A & M	1875	Masters	2,286
Montgomery	Alabama State College	1873	Masters	2,340
Arkansas				
Pine Bluff	Arkansas A, M & N	1873	Bachelor	3,411
Delaware				
Dover	Delaware State College	1891	Bachelor	1,300
District of Columbia				
Washington	District of Columbia Teachers College	1873	Bachelor	
Florida				
Tallahassee	Florida A & M	1887	Masters	4,943
Georgia				
Albany	Albany State College	1903	Bachelor	1,816
Fort Valley	Fort Valley State College	1895	Masters	2,247
Savannah	Savannah State College	1890	Bachelor	2,485
Kentucky				
Frankfort	Kentucky State College	1886	Bachelor	1,620
Louisiana				
Grambling	Grambling College	1901	Bachelor	3,699
Baton Rouge	Southern University and A & M College	1880	Masters	9,222

<u>Location</u>	<u>Institution</u>	<u>Year Founded</u>	<u>Level</u>	<u>Enroll- ment</u>
Maryland				
Bowie	Bowie State College	1867	Masters	1,609
Baltimore	Coppin State College	1900	Masters	1,573
Baltimore	Morgan State College	1867	Masters	4,578
Mississippi				
Lorman	Alcorn A & M College	1871	Bachelor	2,241
Jackson	Jackson State	1877	Masters	4,541
Itta Bena	Mississippi Valley State College	1950	Bachelor	2,282
North Carolina				
Greensboro	North Carolina A & T State University	1891	Masters	3,714
Elizabeth	Elizabeth City State College	1891	Bachelor	1,039
Fayetteville	Fayetteville State College	1867	Bachelor	1,137
Durham	North Carolina Central University	1909	Masters	3,290
Winston-Salem	Winston-Salem State College	1892	Bachelor	1,461
Ohio				
Wilberforce	Central State University	1887	Masters	2,567
Oklahoma				
Langston	Langston University	1897	Bachelor	1,224
Pennsylvania				
Cheyney	Cheyney State College	1837	Bachelor	2,012
South Carolina				
Orangeburg	South Carolina State College	1895	Masters	2,191
Tennessee				
Nashville	Tennessee A & I State University	1909	Masters	4,543
Texas				
Prairie View	Prairie View A & M College	1876	Masters	4,325
Houston	Texas Southern	1947	Masters	4,754
Virginia				
Petersburg	Virginia State College	1882	Masters	3,085
Norfolk	Norfolk State College	1935	Bachelor	4,644

Two Year Colleges Founded for Negroes in the United States, 1969

<u>Location</u>	<u>Institution</u>	<u>Founded</u>	<u>Enrollment 1968</u>
Alabama			
Mobile	Mobile State Junior College	1965	767
Birmingham	Wenonah State Junior College	1963	702
Mississippi			
Clarksdale	Cohama Junior College	1949	831
Utica	Utica Junior College	1903	635

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APPENDIX B

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INTEGRATION OR SEPARATION?

Throughout, we have tried to avoid the question of whether or not black state colleges and universities should remain separate and unintegrated. The question has been well discussed elsewhere. It seems to us that it is appropriate to assess the current college selection process among black high school seniors and freshmen to see where--in fact--black students will go to college. Approximately 34% of black students were in traditionally black institutions in 1970, 11.3% in private senior institutions and 21.7% in public senior institutions. Sixty-six percent of black students were in all other institutions and a large proportion of them (32.1%) were in public two year institutions. The proportion of new black freshmen beginning their study in two year rather than four year schools has been growing rapidly. Increasing urbanization of blacks points towards use of public, urban junior community colleges as the entry point for more and more black students. In 1970, about half of all black freshmen were in two year colleges.¹¹³

In 1964, about one half of all black students were in traditionally black institutions; by 1970, almost two-thirds of all black students were in other than traditionally black institutions.

¹¹³All figures taken from Crossland, op. cit., pp. 26-35.

Further, through mergers, closing, conversions of junior to senior colleges, and desegregation of formerly all black institutions, the number of traditionally black institutions decreased from 123 to 100 from 1963 to 1970. During the years 1964 to 1970, 83% of the national increase in black American college student enrollment occurred in other than traditionally black institutions. Enrollment patterns have thus markedly changed, so that black institutions no longer are responsible for the education of most black students.

Black students are not necessarily choosing black private institutions, either. Since 1968, black private institutions experienced a 2.3% decline in enrollments, no doubt due to a decline in federal aid as well as increased recruitment of black students by white colleges and universities.

Crossland concluded most of the expansion of freshman minority enrollment will occur in the public rather than the private sector, in areas other than the South, in low cost rather than high cost institutions, in colleges located in central cities rather than in suburbs or rural areas and in colleges other than traditionally black institutions.¹¹⁴

This is not to suggest that black institutions should close down or go out of business. The strength of local black communities and the politics of black students and sympathetic constituencies will determine the fate of individual colleges.

¹¹⁴Ibid., p. 71.

It does suggest an order of priorities for those institutions which can serve a unique role for black populations and which should remain identifiably strong black institutions even as opportunities in white public institutions continue to open up. The highest priority would be the black land grant colleges, who--if innovative enough--could come to play new roles in rural economic and social development. Next would be those institutions which are located near urban centers with concentrations of black communities. These schools could--with an urban focus--provide valuable assistance and training in urban programs. Finally, the black community colleges, since the focus of junior colleges is a closer tie of service and relation to local communities.

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