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Feature Stories

## The End of a Journey

By Reginald Stuart

Oct 19, 2006, 11:00



### The End of a Journey

Tennessee's desegregation case comes to a close with all parties in agreement that the state has finally eliminated all vestiges of racial segregation in its higher ed system.

By Reginald Stuart

NASHVILLE, Tenn

Rita Sanders Geier was savoring a moment that had eluded her for nearly 40 years. On a warm, sunny September afternoon, she was free to crack a smile of relief after having finally 'won' the nation's longest-running lawsuit over the desegregation of a state system of higher education. It was a journey she began as a 23-year-old law student just over a month after the Rev. Dr. Martin Luther King Jr. was assassinated in her hometown of Memphis, Tenn.

Rita Sanders Geier was the original plaintiff in a 1968 lawsuit seeking to eliminate Tennessee's dual system of higher education. Nearly 40 years later, her case comes to a satisfactory conclusion.

Hours earlier, Judge Thomas A. Wiseman, senior judge for the U.S. District Court for the Middle District of Tennessee, agreed to dismiss Geier's 38-year-old case after she and a parade of other lawyers declared that Tennessee had finally eliminated all vestiges of racial segregation in the state's higher education system. The "dual system" — one for Blacks, one for Whites — was gone, they said, and had been replaced by a "unitary" system that would be fair to all, regardless of race. The state had invested \$77 million over the past five years and made numerous major policy

changes during that time to create a race-neutral higher education system.

Lawyers for the state vowed that Tennessee would not go back to its old habits, which included denying Blacks and other non-Whites equal access to all higher education opportunities. The state also acknowledged a pattern of unfair and obstructive treatment in regards to historically Black Tennessee State University. But today, court oversight is no longer required or desired, lawyers on both sides said.

Wiseman, who had presided over this often acrimonious and increasingly complex case for 28 years, offered an approving nod from the bench.

"The progress of this case, particularly in recent years, presents a remarkable example of the societal benefit that can occur when lawyers of vision and imagination, motivated by a passion to not only represent a client but to achieve a just result, apply their energy and intellect to a problem," Wiseman said before endorsing the motion to dismiss. The motion ends a battle that sparked a wave of court actions across the South to end race discrimination in state-controlled higher education.

"I think some very solid gains resulted from this litigation, and those gains are institutional, more than bricks and mortar," said Geier. "It's institutional things that will last for a long time."

The litigation, often referred to as "the TSU case," spanned nearly two generations of college students, the terms of 10 Tennessee state attorneys general, seven governors, scores of state lawmakers and a host of college presidents.

"While it could and should have ended a lot earlier, many things had to happen," Geier said, adding that she realized in about the 10th year of litigation that this case would last for many more years. "It's extremely complicated and complex." Geier is now the executive counselor in Washington to the administrator of the Social Security Administration.

News of the end of the Geier litigation was marked by nearly a week of celebrations in Nashville, starting with a Sept. 11 press conference called by Democratic Gov. Phil Bredesen in the chambers of the Tennessee Supreme Court. The conference had more than 200 people in attendance, including Geier, key political leaders from both parties and nearly every top higher education official in the state.

"In some ways this journey is ended — we are concluding this lawsuit, and people are no longer barred from attending colleges and universities because of the color of their skin," Bredesen said, with Geier and others by his side. "But in other ways, this journey stretches far out before us and won't be complete until we remove every kind of barrier that stands in the way of any Tennessean's dream to earn a college education."



Judge Thomas A. Wiseman, U.S. District Court for the Middle District of Tennessee



Geier and her attorney, George Barrett, celebrate the end of the 38-year-old case.

That unusual show of unity was a far cry from the outrage and estrangement that prevailed in the days and years after Geier filed her suit. The date was May 16, 1968, and Geier's action set off a political bombshell that would rattle the state for decades.

Geier, then a part-time teacher at Tennessee State, a law student at Vanderbilt University and legal assistant to liberal activist lawyer George Barrett, sued the state and federal government seeking to stop the University of Tennessee from expanding its part-time night school programs in Nashville into a full-scale four-year program with a new campus. Housed in an aging office building a few blocks from the state capital, UT-Nashville was one of the first campuses in the nation created specifically to serve "nontraditional" students, including state government workers.

Barrett, arguing on Geier's behalf, contended that the expansion would frustrate efforts by Tennessee State to desegregate its larger, predominantly Black campus, three miles away from the capital. He also argued that the expansion would undermine the desegregation of the rest of the state's public colleges and universities. The U.S. Department of Justice successfully moved to become a plaintiff in the case, asking the court to expand Geier's case and order the state to produce a statewide desegregation plan.

Judge Frank Gray Jr., of the U.S. District Court for the Middle District of Tennessee denied Geier's request to block the UT-Nashville expansion but did find "the dual system of education created originally by law has not been effectively dismantled." Gray ordered the state to produce a plan for higher education desegregation, with a focus on Tennessee State. Meanwhile, UT went ahead and began construction of its new campus building.

Using the Supreme Court's 1954 *Brown v. Board of Education* decision as its guide, the state filed periodic reports to the court on enrollment and employment trends but never produced a "dismantle" plan. Each report showed incremental changes in the racial composition of the faculty, administrations and student bodies of each school. Gray, frustrated by the results, issued new orders in 1972 with a focus on boosting White enrollment at Tennessee State.

That same year, the NAACP Legal Defense and Education Fund sought to enter the case on behalf of a group of TSU faculty, students and staff. The LDF claimed TSU had been improperly cast as a perpetrator in the segregated system when, in their opinion, the university was a victim of the state's race policies. Led by Ray Richardson, a Black math professor at the university, the LDF argued that too much emphasis was being placed on ridding that institution of its racial identity and too little on boosting its resources. Also, they claimed that there was insufficient improvement at the state's traditionally White institutions.

In 1977, the expanded group of plaintiffs proposed the merger of TSU and UT-Nashville, with Tennessee State as the surviving institution. After a bitter, month-long hearing, Gray granted the proposal, which sent shockwaves across the state and region.

It was the first time a court had ordered a traditionally White campus to merge into a historically Black one, with the Black institution surviving.

The victory for Geier and the expanded plaintiffs group proved a hollow one. Nearly half of UT-Nashville's students refused to register at Tennessee State the next fall. There were squabbles, frequently falling along racial lines, over whether faculty from the older and larger Tennessee State or the smaller and younger UT-Nashville would be in charge of various departments and programs.

The political and educational landscape for Geier was as muddled and hostile as ever, and no state political or education leader was stepping forward to change it. Meanwhile, Gray died in 1978. Wiseman, a former state treasurer and lawmaker, was appointed by U.S. President Jimmy Carter as Gray's successor, inheriting the controversial case.

The dynamics of the case changed again in 1983 when another group of Tennessee State faculty, this one a predominantly White group led by political science professor H. Coleman McGinnis, sought to enter the case. McGinnis and his colleagues had come from the old UT-Nashville and were upset over how the merger was progressing. They wanted the court to ensure that TSU would be required to enhance its downtown campus and that the university's "policies and practices were conducive to the continued desegregation of TSU." During this same period, several individual lawsuits had been filed against Tennessee State by merged UT-Nashville faculty, alleging retribution for their vocal advocacy on behalf of that institution.

Wiseman called the parties together in 1984 and told them to work out their differences. Under pressure, all agreed to a Stipulation of Settlement. This plan envisioned program and physical plant improvements for Tennessee State and required the state's other schools establish programs to enhance their desegregation efforts. As the years passed, the state never made good on much of the money it promised to invest in Tennessee State's physical plant.

Then, in 1990, an angry group of TSU students, led by senior Jeff Carr, marched downtown and staged a hunger strike on the downtown campus to protest what they said were deplorable conditions in their campus dormitory. The hunger strike drew the attention of then-Gov. Ned McWherter, the fifth governor to sit in office during the life of the case. He promised to address their complaints, and after visiting the main campus, said he was personally "ashamed" of what he saw and pledged to fix the campus.

True to his word, McWherter went to the Tennessee Legislature demanding the state make good on its promises to upgrade the university. Over the next 15 years, \$127 million would be poured into new buildings and renovations at Tennessee State's main campus.

But despite McWherter's efforts, the overall Stipulation of Settlement never worked. There was no buy-in among the rank and file, and the myriad small moves needed to make the plan work never happened. Also, in 1992, the U.S. Supreme Court issues a ruling that changed the entire landscape for Geier and states engaged in desegregation cases.

In *United States v. Fordice*, a Mississippi case seeking to dismantle that state's dual system of higher education, the high court echoed Gray's holding of 25 years earlier that "... states do not meet their constitutional obligation to eliminate vestiges of segregation simply by maintaining race neutral admissions policies. ... Instead, states with educational policies traceable to a de jure system that continue to have segregative effects must eliminate those policies to the extent practicable and consistent with sound educational practices." But the high court also said in *Fordice* that it is not segregation if a school is racially identifiable, as long as state policies don't foster racial identification.

At first glance, the *Fordice* decision appeared to solve the "TSU problem." Plaintiffs had long argued that the state's desegregation remedies were erasing TSU's identity as a "Black" college.

The high court appeared to say a state could be in compliance while continuing to allow a historically Black college to remain majority Black. The other issues would take care of themselves, as Black enrollment was steadily increasing at several other historically White campuses and scattered gains were being made in employment.

With *Fordice* in hand, the state in 1996 asked Wiseman to dismiss Geier's case on the ground that the Tennessee system met the new standard. The plaintiffs sharply disagreed. So did Wiseman, who sent the parties back to work.

Shortly afterward, Barrett contacted Justin P. Wilson, counsel to then-Republican Gov. Don Sundquist, to see about settling the suit. Wilson, a strong state's rights advocate who detested federal court supervision, agreed to bring Barrett's suggestion to Sundquist. The governor signed on, telling Wilson he wanted segregation "to end under my watch." With the green light from Sundquist, Barrett and Wilson contacted State Attorney General Paul G. Summers, who suggested mediation. Realizing that they needed outside help, the parties in the suit all agreed to the mediation.

In 2000, that help arrived in the person of Carlos González, a young, Cuban-born Georgian who was 7 years old when the Geier case was filed. González had developed a small book of clients and a good reputation as a mediator. Among the cases he'd mediated was *Knight v. Alabama*, a suit similar to Geier's.

"It occurred to me early on that these folks really wanted to solve the problem," said González. "They wanted to find an equitable solution. There were a lot of hard feelings and tension in the air."

González methodically identified and settled the most divisive issues in the case. Then, he went to work on a myriad of topics that culminated in the January 2001 Consent Decree, signed by all the plaintiffs, the governor and all of the state's constitutional officers. The decree was also endorsed by a large pool of bureaucrats whose job it would be to get everything completed in five years.

Out were the numerical quotas for enrollment and employment that had dominated and dogged the case for more than 30 years. In was a plan to enhance Tennessee State's academic offerings at its downtown campus and boost its ability to compete without stripping it of its roots and history. In was \$23 million to renovate the campus, now named the Avon Williams Campus in honor of the late civil rights attorney and state senator. In were millions of dollars for scholarships TSU could use to lure students. In were governance policy changes requiring more program and calendar coordination. In were faculty exchanges between the three state colleges in Middle Tennessee and new policies aimed at enhancing "other race" enrollment and employment at schools across the state.

The state had spent \$77 million since 2001 to make the Consent Decree work, and there were indications across the state that this time the plan was having an effect. At the press conference, Bredesen pledged to seek at least \$19.3 million a year for the remainder of his tenure in office to make the decree work. He is up for re-election next month.

Tennessee State President Melvin N. Johnson, on the job for just over a year, says he fully grasps the challenge ahead — honoring TSU's rich history but assuring it also has a meaningful place in Tennessee's future.

"To get Nashville to take ownership, our school has to reach out," Johnson says. "We're not just talking about Black and White diversity."

But missing from the grand plan was a law school for Tennessee State. As part of the Consent Decree, the state had agreed to put up \$10 million toward the cost of acquiring the Nashville School of Law, a small, prestigious private law school. Even González could not pull that off, as the directors of the school refused all overtures to sell. The funds were instead reallocated into the budget for renovation of the Avon Williams Campus.

The law school issue aside, Wiseman praised González at the final court hearing as a “miracle worker,” a sentiment echoed by everyone involved, including Geier.

“I think the whole atmosphere has changed,” she said. “There are more people of color, more people of conscience involved in making the unitary system work. This is what desegregation is about, having more people there, having their interests represented.”

As for Tennessee State’s new lease on life, Geier says, “there’s lots of money, lots of opportunity. It’s theirs to lose. Everybody says they have good intentions. Upgrading Tennessee State is going to make it more competitive. It’s an opportunity that is going to have to be taken advantage of by President Johnson and the Middle Tennessee community.”



**Rita Sanders Geier:** Plaintiff. As a law student at Vanderbilt University, she filed the original lawsuit 38 years ago fighting the University of Tennessee’s plan to open a new, full-time campus in Nashville.



**Judge Thomas A. Wiseman:** Presiding Judge. Inherited the case 28 years ago after the death of the original judge, Frank Gray Jr.



**Carlos González:** Court-appointed mediator. Called a “miracle worker” for his work in bringing the case to a mutually successful conclusion.



**George Barrett:** Attorney for Geier. Argued the case on Geier’s behalf.



**Dr. Melvin N. Johnson:** Current Tennessee State University President. Plans to expand TSU’s mission from its historically Black roots.



**Ray Richardson:** TSU mathematics professor. Led the plaintiffs group that joined the Geier case in 1972, arguing that TSU was being made the victim of the state’s desegregation plan.