TENNESSEE BAR
JOURNAL
DECEMBER 2017 | VOLUME 53, NO. 12 TBA.ORG

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ALSO:
The 1865 Constitutional Amendments and the Return of Civil Government in Tennessee

TENNESSEE BAR JOURNAL
DECEMBER 2017 VOLUME 53, NO. 12

ON THE COVER
Read about the 38-year battle to secure educational opportunity for African-Americans in Tennessee's public colleges and universities. *Cover design by Landry Butler; photo courtesy Tennessee State University.*

A LONG JOURNEY to JUSTICE

The Story of the 'Geier' Case and the Desegregation of Tennessee Higher Education

By C. A. González

Introduction by The Hon. Thomas A. Wiseman Jr., U.S. District Judge (Ret.):

Shortly after receiving my commission as a United States District judge in August 1978, I inherited from Judge Frank Gray Jr. the 10-year-old *Geier* lawsuit challenging whether Tennessee had fully removed the vestiges of segregation from its public system of higher education. The case was among the most difficult and contentious of my 28-year judicial career and would consume much of my time before finally ending on Sept. 21, 2006. In this article, Carlos González tells the history of this groundbreaking lawsuit in a way that only one intimately familiar with it can. I first appointed Mr. González as the *Geier* mediator in 1999, and then as the court's monitor in 2000. His historically accurate article captures the struggles faced by the court, the parties, and the many governors who confronted the obligation to eliminate the pernicious effects of discrimination from the state's colleges and universities. The article is only lacking in its failure to recognize and credit the indispensable,

ABOVE: Students go to class at Tennessee State University in the 1960s. *Photos by John Cross, courtesy TSU.*

conciliatory, intellectual, and legal roles played by Mr. González.

Without his tireless efforts, the results described in this article could not have been achieved. The story is worth reading and remembering because it reminds us of how far we have come and how far we have yet to go.

During the 1960s on college campuses across the country and in Tennessee, African-Americans were demanding social justice and advocating for civil rights on the streets and in the courts. History is changed by persons willing to challenge injustice. In this instance, the challenge was brought by a young woman and her lawyer intent on securing educational opportunity for African-Americans in Tennessee's public colleges and universities. Little could they have imagined that their journey would take 38 years and in its course change public higher education not only in Tennessee but throughout the southern United States.

This is the story of the *Geier* lawsuit: a story of courageous commitment and slow progress, of nationally significant litigation[1] and excruciatingly provincial interests, of towering legal and educational figures and ordinary citizens. It is also a jurisprudential story. From the *Geier* precedent, the United States Supreme Court formed the constitutional principles governing the desegregation of higher education.

Something Must Be Done

Rita Sanders Geier, the lead plaintiff in the *Geier* lawsuit, is a native of Tennessee and a graduate of Fisk University and the University of Chicago. On returning from Chicago, Ms. Geier enrolled in the Vanderbilt University Law School. While in law school, she worked as an instructor at Tennessee State University (TSU), the state's only publicly supported historically black university.[2] At that time, she also worked as a law clerk in the office of attorney George Barrett.

From her position at TSU, she learned firsthand how African-American college students were adversely affected by the vestiges of segregation. Ms. Geier learned something else in those years. She learned from Mr. Barrett that the law could be used to change institutional behavior.

In 1960, Tennessee abolished the prohibition on black attendance at traditionally white collegiate institutions (TWIs).[3] The implementation of racially neutral admission practices did not dissuade Ms. Geier and Mr. Barrett from their course. In their minds, the nonexclusionary admission policies did little to eliminate segregation's vestiges. The state had simply substituted a de facto regime of segregation for the unlawful de jure system. Ms. Geier and Mr. Barrett were intent on challenging the state's claim that its colleges were operated in a nondiscriminatory manner.[4]

History's Legacy

The integration of higher education — with the notable exception of Alabama and Mississippi — was much less contested than in the K-12 context. While voluntary integration was the general rule, southern higher education, including in Tennessee, nevertheless continued to reflect segregative policies that had been enshrined in law.[5] The impact of these policies on higher education was acutely felt in the post-World-War-II years.

Higher education experienced a 20-year period of rapid expansion fueled by the 1944 Servicemen's Readjustment Act, the "GI Bill," that provided veterans money for education. In Tennessee, the benefits of this expansion[6] (new programs, new facilities, growing enrollments and additional state funding) were not equally distributed. Throughout the postwar period, the state's policy of inhibiting TSU's growth continued. Tennessee State's enrollments were capped, its curriculum severely restricted, and state funds for the maintenance of its campus seldom appropriated. Similar limitations did not exist for the traditionally white institutions. The TWIs had access to bond markets, all high-demand academic and professional degree programs were distributed among them, and there were no artificial curriculum and enrollment limitations imposed.

Just as higher education was expanding, Tennessee modified its college funding formula. The TWIs with their growing enrollments and high-cost in-demand science and engineering programs were the winners. The larger the enrollments and the more science-based the curriculum, the more funding the formula produced, and the more money the legislature appropriated. For TSU, neither of these situations held true. Instead, the formula created significant financial impediments since TSU's enrollments were static or declining and its program inventory was largely devoid of high-demand high-cost classes.

Rita Sanders Geier was a 23-year-old Venderbilt Law student and instructor at Tennessee State University when she led other TSU faculty and students to file suit over the University of Tennessee's plans to develop a Nashville campus.

Compounding the already formidable obstacles faced by TSU was the perception that the university's programs were of lower quality than those at the TWIs. This perception was more than the effect of the commonly held social conventions of the time. It was reinforced by the state's insistence that TSU's few graduate and teacher programs be duplicated by the TWIs in close geographic proximately to TSU,

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Long Journey *continued from page 15*

namely, the University of Tennessee Nashville (UTN), Middle Tennessee State University (MTSU) and Austin Peay University. The duplication of programs and the restrictions on expansion are among the most obvious manifestations of a segregative educational system.

UTN, only a few miles from TSU, presented the greatest challenge to the desegregation of TSU and a significant barrier to its growth.[7] When in 1968, Ms. Geier and Mr. Barrett learned of UTN's planned expansion of its downtown campus, they grew alarmed at the impact it would have on TSU's already precarious state. Believing the future of Tennessee State hung in the balance, Rita Geier and other black and white citizens[8] resolved to thwart the expansion of UTN through an injunction and bring reform to the state system of higher education.

The federal lawsuit they filed alleged the state perpetuated unlawful segregation by maintaining policies that ensured TSU could not integrate and that discouraged blacks from attending and working at the TWIs. Critically, the plaintiffs also asserted that Tennessee did not meet its obligations to dismantle the segregative system simply by eliminating racial barriers to admission.[9]

In 1968 Tennessee's colleges bore the hallmarks of segregation. Few African-Americans attended institutions other than TSU.[10] The funding formula generously supported the beneficiaries of past segregative policies, and TSU had, as a matter of state practice, been restricted in its growth. Additionally, the TWI's enjoyed the benefits of an academic monopoly on professional and high-demand programs. The effect of these undeniable conditions on TSU and African Americans was devastating.

A Changing Landscape

Gov. Buford Ellington, the Board of Trustees of the University of Tennessee, the Tennessee Board of Regents[11] (TBR), the Tennessee Higher Education Commission[12] (THEC), and Tennessee State University were all named as defendants in the *Geier* lawsuit. Because Congress had appropriated $1 million in construction funds for the new UTN campus, the United States was also a named defendant.[13] In doing so, the plaintiffs hoped to enjoin the disbursement of the appropriated funds.[14]

Upon learning that the United States was a defendant in a civil rights case, Attorney General Ramsey Clark sent Pat Hardin,[15] then in the Department of Justice Civil Rights Division, to Nashville to assess the situation. On Mr. Hardin's recommendation, President Lyndon Johnson and Attorney General Clark agreed the United States should move to be dismissed as a defendant and instead to intervene as a plaintiff. Since President Johnson was a political ally of Gov. Ellington, the president wanted to personally tell the governor about his decision.[16] The president called Gov. Ellington.

At times the conversation between the two men grew heated.[17] In the end, the president was unmoved, and the United States was realigned as a plaintiff-intervenor. Perhaps to placate the governor, the United States agreed to oppose the plaintiffs' efforts to enjoin disbursement of the construction funds.

Judge Gray denied the injunction believing the expansion of UTN would not further the system's segregation since UTN admitted students without regard to race.[18] He also noted that UTN was primarily an evening school with no plans to expand into a degree-granting day program and thus should not impede TSU's desegregation.[19]

Speaking generally about the obligation to desegregate, Judge Gray agreed Tennessee did not satisfy its duty to eliminate segregation's vestiges simply by maintaining racially neutral admission practices.[20] He directed defendants to submit a plan to dismantle the dual system, paying "particular attention" to the desegregation of TSU.[21] The court believed that the "failure to make [Tennessee State] a viable, desegregated institution … [was] going to lead to its continued deterioration as an institution of higher learning."[22]

The State's Unsatisfactory Plans to Desegregate Higher Education

In April 1969, the state filed its first plan to desegregate higher education. The plan reaffirmed the state's commitment to eliminating the dual system and proposed to achieve this goal by reliance on the individual efforts of the TWIs.[23] Regarding TSU, the plan proposed using racially integrated teams to recruit white faculty and students and for the university to work cooperatively with UTN.[24] The plan also called for TSU facilities to be upgraded and for the development of high-demand programs.[25] Amazingly, the plan did not provide TSU with financial resources to accomplish its objectives. The court neither approved nor disapproved the plan since it utterly lacked specificity.[26] Instead, the state was given another year to report on the status of the steps taken to desegregate the system.

By April 1970, the TWIs showed modest progress in African-American

1870 — Tennessee state constitution mandates racial segregation in state colleges and universities.

1901 — Tennessee criminalizes the integration of its public and private colleges.

1912 — Tennessee Agricultural & Industrial State Normal School for Negroes is established.

1927 — Tennessee Agricultural & Industrial State Normal School for Negroes becomes Tennessee Agricultural & Industrial State College.

1940 — Tennessee college and university enrollment is less than 26,000.

1944 — The Servicemen's Readjustment Act of 1944, also known as the G.I. Bill, begins providing money for veterans' education.

enrollment. TSU, however, showed no change; its student population remained 99.7 percent black.[27] Judge Gray concluded that the TWIs were making slow progress but that the plan for TSU had "no prospect of working."[28] He noted that as long as TSU remained a primarily African-American institution, the duty to dismantle the dual system would remain unmet.[29] The court ordered the state to submit a new plan by March 1972 focused on achieving TSU's desegregation. The state was directed to consider the feasibility of merging TSU and UTN.[30]

What Judge Gray did not foresee was that his focus on TSU as the heart of the dual system would lead the *Geier* case into decades of uncertainty as the parties and court struggled over the identity of the university. The struggle played out not only in the federal courtroom of Judge Gray and his successor Judge Thomas A. Wiseman Jr., but also on the streets of Nashville, in the corridors of the Capitol building, and in the national press.

Merger

Defendants' 1972 plan was little more than a restatement of earlier efforts with the same minimal detail that characterized previous plans. The United States and the *Geier* plaintiffs objected, believing the plan offered no prospect for meaningful desegregation in Nashville. They urged the court to order the merger of UTN and TSU as the most promising method for achieving the desegregation mandate.[31]

The Tennessee Board of Regents, the Tennessee Higher Education Commission, and TSU filed a joint report with separate recommendations. TSU advocated for the merger. TBR and THEC focused on program exclusivity for TSU but opposed the merger. They argued that with program exclusivity, TSU could establish high-demand programs attractive to white students. THEC went a step further and acknowledged that competition with UTN was TSU's main impediment to desegregating. While THEC did not advocate for merger, it admitted that the merger might be appropriate in the future.[32] The University of Tennessee filed its own report strongly rejecting the merger. Instead, UT again proposed that a cooperative program approach between TSU and UTN be adopted.[33]

As the court considered the parties' positions, a motion to intervene was filed by Dr. Raymond Richardson, a Professor of Mathematics at TSU. Dr. Richardson and other black faculty and students sought to represent the interests of African-American students and faculty across the state and at TSU. Judge Gray granted Dr. Richardson's motion to intervene.[34]

The Richardson intervenors objected to the specifics of the defendants' plans, believing the obligation to desegregate fell too heavily on TSU without a corresponding obligation on the TWIs to increase African-American opportunities. They also feared a loss of TSU's identity as an institution serving the black community.[35] The intervenors supported a merger, provided TSU emerged as the surviving institution.

Between 1972 and 1977, Judge Gray refused to order the merger, opting instead to follow the course proposed by defendants. During this five-year period, a series of reports showed virtually no cooperation between TSU and UTN and no meaningful change in the racial composition of either school.[36]

In 1977, defendants filed a dispositive motion contending they had satisfied their duty to dismantle the dual system. The court denied the motion. By this time, Judge Gray realized the state's efforts to eliminate the vestiges of segre-

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1947

University of Tennessee Nashville established.

1950

Tennessee college and university enrollment at almost 40,000.

Long Journey *continued from page 17*

gation from the higher education system in Nashville were not working and that something drastic had to be done. The case was set for a hearing.

At the July hearing, the evidence told a story of the state's indifference to its own desegregation plans. UTN and TSU had failed to work together, the facilities at TSU were in a deplorable state, and TSU had failed to establish high-demand academic programs. By any measure little had changed in Nashville since the filing of the lawsuit 10 years earlier except that UTN had expanded into a full-fledged day and night degree-granting institution with more than 5,800 students.[37] The court exhibited no restraint when it observed that "[t]he hope for future progress is further dimmed by the … inability of defendants to agree … as to the proper course of action, and by the reluctance of the politically powerful University of Tennessee to take significant steps to eradicate [the dual system] in Nashville."[38]

Finding no other feasible approach, the court ordered the merger of UTN and TSU.[39] Noting that the "existence and expansion of predominantly white UTN alongside the traditionally black TSU … fostered competition for white students and … impeded the dismantling of the dual system."[40] The state had until July 1, 1980, to complete the merger.[41]

For the first time, a predominately white institution was merged into a traditionally black one as a remedy in a desegregation case. The merger appeared to be a victory for TSU and the plaintiffs. In reality, it unleashed the most contentious and difficult period in the litigation's long history.

Judge Wiseman Takes Over

The mechanics of the merger failed at critical points. Half of the students attending UTN refused to register for classes at Tennessee State. Conflicts arose between UTN and TSU faculty over control of programs and departments. State leaders were either silent or openly hostile to the merger. And several faculty members and administrators employed by UTN filed lawsuits accusing TSU of retaliating against them for contesting the manner in which the merger was being implemented.

The author, Carlos González, and Judge Thomas A. Wiseman on Sept. 21, 2006, in the judge's chambers just after he granted the motion to dismiss *Geier.* González was the mediator and court's monitor in the case. *Submitted photo.*

As resistance intensified, Judge Gray died. Judge Wiseman, who had only recently been named to the federal bench, inherited the case in 1978 and with it a host of challenges that would bedevil the court for 28 more years.

Like his predecessor, Judge Wiseman believed that the heart of the desegregation problem lay in Nashville.[42] He shared Judge Gray's belief that the "the phenomenon of a black TSU … negates the contention that the dual system has been dismantled."[43] Judge Wiseman grew increasingly frustrated that the mandate to eliminate the vestiges of segregation seemed as elusive as ever. TSU enrollment and employment data bore out Judge Wiseman's concerns. In 1979, two years after the merger, African-American freshman enrollment at TSU was 69.7 percent; by 1983 that number had climbed to 90.2 percent.[44] A similar trend was evident when examining administrative and faculty employment at TSU.[45]

Not surprisingly, by early 1983 divisions within the TSU community had intensified. Factions with very different perspectives on the future of Tennessee State were emerging. To ensure the court had before it the full range of competing perspectives, Judge Wiseman permitted a group of white and black TSU faculty and students to intervene under the leadership of Dr. H. Coleman McGinnis, a TSU professor of political science who had previously been on the faculty of UTN.[46]

Using uncontested enrollment and employment data, the McGinnis intervenors alleged that the merger was being intentionally mismanaged by the TBR and TSU with the goal of resegregating the university. The allegation was explosive. Immediately the case took on a more contentious cast as the parties struggled over the future of desegregation generally and the role of TSU in particular.

Searching for a resolution of the case, Judge Wiseman decided a settlement was long overdue and he ordered the parties to the negotiation table. The negotiations took place within the

1960
Tennessee college and university enrollment now more than 60,000.

1960
The state abolishes prohibition against blacks at traditionally white institutions (TWIs).

1968
Tennessee Agricultural & Industrial State College becomes Tennessee State University.

1968
Geier and Barrett file federal lawsuit to thwart expansion of UT Nashville.

1969
Tennessee files first desegregation plan in April.

1970
By April, TWIs show modest progress but Judge Gray concludes there's no prospect of success at TSU.

context of Judge Wiseman's insistence that the desegregation mandate necessarily required TSU to lessen its black identity.[47] The parties eventually reached an agreement but in doing so sowed the seeds of a collision that would take more than 20 years to resolve.

First Settlement Agreement

After months of negotiations culminating in a multi-hour marathon session in the federal court house, the parties reached a settlement. The 1984 agreement focused on the recruitment of students and the employment of minority faculty and staff statewide. It called for the significant enhancement of TSU facilities and gave Tennessee State first priority for all new graduate programs in the Middle Tennessee region. The settlement also prohibited the establishment of doctoral programs at MTSU and Austin Peay and capped the number of masters' level programs at those institutions to the number then existing.[48]

Its most controversial provision required TSU to work toward a goal of at least 50 percent white undergraduate students by 1993,[49] and 50 percent white faculty and senior administrative staff by 1989.[50] No TWI had a specific racial goal for enrollment or employment established. The settlement also required that no university self-identify as a predominately one-race institution in any official publications or public statements.[51] This provision was intended to sever TSU from its historical moorings and restrict its ability to identify as a black university. The reaction by TSU supporters to these provisions was visceral. Several hundred students marched on the Federal Courthouse in protest, and university supporters openly criticized Judge Wiseman for what they considered the denigration of TSU's black heritage. The outrage was not limited to Tennessee.

The settlement drew national coverage. African-American leaders from across the county excoriated it as a humiliating return to "white control."[52] The pressures on TSU to resist were unrelenting and organized. Not surprisingly, the settlement did little to change the demographics or enrollment trends of TSU.

By the early 1990s, TSU students began to express their dissatisfaction with the failure to deliver on other aspects of the settlement, such as the promised enhancements to the university's facilities. They were angriest about the condition of the dormitories, which they described as deplorable.[53]

To bring attention to their concerns, several dozen students staged a hunger strike. The students' actions together with mounting political pressure convinced Gov. Ned McWherter to meet with TSU student leaders. The students persuaded the governor that he should tour the campus personally and see for himself the conditions in which students were living. Gov. McWherter did so and stated publicly that he was ashamed of what he saw.[54] He pledged to fix the problems. The governor was true to his commitment and put in motion a successful $127 million plan for new buildings and renovations on the TSU campus.[55] This was the first time the state had provided funds as part of the settlement to renovate TSU facilities.

Despite Gov. McWherter's commitments, the settlement remained ineffective and unpopular. MTSU and Austin Peay chaffed under the restrictions placed on their graduate curriculum,

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1970

State ordered to submit new desegregation plan by 1972.

1972

State's new plan is a restatement of earlier plan.

1972

Geier plaintiffs propose merger between TSU and UTN.

Long Journey *continued from page 19*

and the United States during the Reagan administration opposed the settlement's affirmative action initiatives.[56] Furthermore, the TBR and the UT Board of Trustees resented the loss of planning and administrative control over their respective institutions.[57]

The *Geier* plaintiffs and the Richardson intervenors were also dissatisfied with the stipulation. They believed that too much attention was being focused on TSU's obligation to desegregate without a corresponding focus on the TWIs. And the McGinnis intervenors felt the TBR and TSU were shirking their responsibility to implement the settlement.

The Supreme Court Explains What Tennessee Must Do

In 1992, the Supreme Court finally addressed a state's duty to eliminate the vestiges of segregation from a formally dual system of higher education.[58] Following the trail blazed by Judge Gray, the Supreme Court agreed that a state did not meet its constitutional requirement simply by enacting racially neutral admission practices.[59] Rather, the state must eliminate all current policies traceable to the dual system if such policies had ongoing segregative effects and could be eliminated in an educationally sound manner.[60]

Importantly, the court noted that the racial identifiability of a college is not itself a violation of the Constitution,[61] thus ending the debate about whether TSU could remain tied to its legacy as a black institution. The question of whether Tennessee had eliminated the educational policies traceable to its dual system would take another decade to resolve and bring the *Geier* case into its most active phase.

Final Settlement Agreement

Following the Supreme Court's decision, the parties engaged in several years of litigation over compliance with the 1984 settlement, none of which moved the case toward resolution. The litigation culminated in the state's motion for summary judgment. The state argued that its system of higher education was desegregated to the extent required by the Constitution. Judge Wiseman disagreed and denied the motion.

By this time, George Barrett, perhaps tired of years of litigation, approached Paul Summers, the Tennessee attorney general, and Justin Wilson, Gov. Don Sundquist's legal advisor, to propose that the *Geier* case be mediated. Mr. Wilson took the proposal to the governor and the governor immediately agreed, telling Mr. Wilson, "Let's end segregation in Tennessee on my watch and not pass it on to the next governor."[62] Attorney General Summers and the other parties also agreed the time was right to seek a mediated settlement.

Judge Wiseman made clear he wanted a comprehensive agreement that when implemented would end the case and allow the court to enter a declaration that the state had eliminated the vestiges of segregation. Reaching such an agreement was difficult. It first required the parties to identify constitutionally suspect policies and then agree to reforms that were not only legally defensible but educationally and fiscally responsible. Among the most challenging issues was realigning the educational mission of TSU and MTSU and restoring the proper balance between the two schools so they could better serve their students.

The *Geier* case was so intertwined with politics that it is difficult to discern where the legal analysis gave way to political calculus. What everyone understood is that no settlement was possible if it did not have the political support of the governor and the legislature,[63] the TBR and UT governing boards, and the competing factions within the TSU community. After a year of intense mediation, the parties agreed to a comprehensive settlement. The agreement provided for a five-year implementation period and contained a clause that upon its successful implementation, the vestiges of segregation would be eliminated.[64]

The settlement, in the form of a consent decree, was approved on Jan. 4, 2001. It was divided into three sections: a section dealing with statewide issues, another dealing with issues unique to Middle Tennessee, and a final section laying out a monitoring and oversight plan.[65]

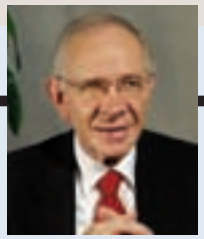
The manner in which the agreement was structured smoothed the way for its implementation. This was true for several reasons: First, the agreement specified the obligations of the parties and left responsibility for implementation in the hands of governing boards and administrators. Second, to the extent possible, funding amounts were included in the agreement, thereby allowing the state to budget for its financial commitments. Third, the monitoring process was set up to ensure transparency in decision-making and overseen by a court-appointed monitor.[66]

A Lasting Legacy

Rita Geier's lawsuit was the first of its type in the country and critical in developing the jurisprudence of higher

1972-77
Gray refuses to order merger.

1977
Gray orders merger by July 1980.



Judge Frank Gray Jr. (1908-1978)

1978
Wiseman inherits case from Gray in August.

1983
Data shows that merger is not working.

1984
Parties negotiate first settlement agreement.

education desegregation. Yet *Geier* was about more than the establishment of a legal theory; it was about redressing the legacy of segregation. It took decades to resolve, in part, because the vestiges of segregation were woven deeply within the fabric of the state's colleges and universities. Only when the parties and the people of Tennessee, through their officials, took leadership of the case and decided the time had come to remedy the inequities of the past did the conditions exist for the case to be resolved.

The last two official acts in the case took place on Sept. 21, 2006. On that date Judge Wiseman granted the parties Joint Motion for a Final Order of Dismissal. In doing so, he noted that "The progress of [the *Geier* lawsuit], 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."[67]

The other event occurring that day is equally important. Prior to the hearing before Judge Wiseman, Gov. Phil Bredesen convened a press briefing to announce that after 38 years the *Geier* case was coming to an end.

In an act of generosity, Gov. Bredesen invited Gov. Sundquist to stand with him as he made the announcement. He spoke of the case's long journey and the contributions that his predecessors and many others had made in bringing about the end of the case. Most importantly, he also recognized that the end of the lawsuit was not the end of the state's commitment to ensuring equality of educational opportunity.

CARLOS A. GONZÁLEZ works extensively as a special master, mediator and arbitrator. Since 1993 he has had numerous federal appointments across the country as a special master monitoring and mediating complex commercial and institutional reform cases. In 1999, González was appointed by United States District Judge Thomas A. Wiseman Jr. to mediate the *Geier* lawsuit pending in Nashville. Then in 2000, Judge Wiseman appointed him as the court monitor to oversee the implementation of the *Geier* settlement agreement. González is a 1989 graduate of Vanderbilt Law School and holds degrees from Yale University and The Florida State University. He is the president-elect of the Academy of Court Appointed Masters and is the principal of the González Firm LLC in Atlanta, Georgia.

Notes

1. The Sixth Circuit described the *Geier* case as "exceptional" and "nationally significant." *Geier v. Sundquist*, 372 F.3d. 784, 796 (6th Cir. 2004).

2. From its founding through the 1960s, Tennessee State University was known as the Tennessee A&I State University. In 1970 the name was changed to Tennessee State University. To avoid confusion, the university will be referred to throughout this article as "Tennessee State University" or "TSU." A history of the school can be found at: http://www.tnstate.edu/about_tsu/history.aspx (last visited Oct. 25, 2017).

3. *Sanders v. Ellington*, 288 F. Supp. 937, 940 (M. D. Tenn. 1968). Rita Geier's maiden name was Sanders.

4. George Barrett Oral History, recorded June 27-28, 2003, at 32-33, maintained by The University of Florida Digital Collections. Available at http://ufdc.ufl.edu//UF00093255/00001 (hereinafter "Oral History")(last visited Oct. 25, 2017).

5. Racial segregation in Tennessee's colleges and universities was mandated by Art. 11 §12 of the 1870 state constitution. In 1901 Tennessee became the first state in the country to criminalize the integration of its public and private colleges. *Geier v. University of Tennessee*, 597 F.2d 1056, 1058 n.1., cert. denied, 444 U.S. 886 (1979).

6. In 1940 Tennessee's colleges and universities enrolled fewer than 26,000 students; by

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1984-92

Parties attempt to implement first settlement agreement.

1990

TSU students stage hunger strike to protest conditions at school.

Long Journey *continued from page 21*

1950 the number was almost 40,000, and by 1960 more than 60,000 students were enrolled in the state's institutions. See Table 25, in "120 Years of American Education: A Statistical Portrait" by Nation Center for Education Statistics, 1993, available at http://nces.ed.gov/pubs93/93442.pdf

7. Oral History at 32-33. The University of Tennessee Nashville figures prominently in the *Geier* story. Established in 1947 during the postwar boom in higher education, UTN was originally conceived as an extension center of the University of Tennessee to serve working adults exclusively and with a limited curriculum offered through classes available only during the evenings and weekends. Ellington, 288 F. Supp. at 941.

8. Among the white citizens who joined Ms. Geier two are notable: The Rev. Will Campbell and Dr. Pat Gilpin.

Rev. Campbell was a celebrated champion of civil rights who expounded on the relationship between theology and social activism. A Baptist minister and prolific writer who died in Nashville on June 3, 2013, Rev. Campbell was the only white person present at the founding of the Southern Christian Leadership Conference. His iconoclastic nature undoubtedly drew him close to George Barrett, who shared a similar personality.

Dr. Gilpin was a teacher at UTN and a friend of Rita Geier who shared her commitment to racial equality. Dr. Gilpin provided information to Mr. Barrett about the operation of UTN and its future plans for growth that was invaluable to the early prosecution of the lawsuit.

9. Ellington, 288 F. Supp. at 940.

10. The percentage of African-Americans attending Tennessee public universities in 1968 was as follows: Austin Peay State University 6.7 percent; East Tennessee State University 1.1 percent; Memphis State University 7.6 percent; Middle Tennessee State University 1.5 percent; Tennessee State University 99.4 percent; Tennessee Technical University 0.6 percent; and the University of Tennessee 1.2 percent.

The late George Barrett (left) and Rita Geier. As a result of their lawsuit, the state of Tennessee has poured millions of dollars into scholarships and other programs in order to increase the racial diversity of student bodies, faculty and staff at the state's colleges and universities.

Gail M. Epstein, *Desegregation of Public Institutions of Higher Education: Merger as a Remedy,* 56 CHI.-KENT. L. REV. 701, 702 n.9 (1980). Available at http://scholarship.kentlaw.iit.edu/cklawreview/vol56/iss2/12 (last visited October 25, 2017).

11. In 1968, the state's colleges and universities other than those governed by the UT Board of Trustees were under the supervision of the Tennessee Board of Education. In 1972, the General Assembly established the Tennessee Board of Regents to serve as the governing body for the University and Community College System of Tennessee.

12. Created in 1967 by the General Assembly, THEC is responsible for coordinating and evaluating postsecondary education policies and programs in Tennessee.

13. Oral History at 33.

14. *Id.* at 34. See also, *Geier v. Blanton*, 427 F. Supp. 644, 645 (M. D. Tenn. 1977) aff'd sub nom. *Geier v. University of Tennessee*, 597 F.2d 1056 (6th Cir. 1979).

15. Pat Hardin later became the W. Allen Separk Distinguished Professor of Law at the University of Tennessee College of Law.

16. Oral History at 34.

17. *Id.*

18. Ellington, 288 F. Supp. at 941. The one-million-dollar appropriation was paid by the United States, and UTN constructed its new facility.

19. *Id.*

20. *Id.* at 942.

21. *Id.*

22. *Id.* at 943.

23. See *Geier v. Dunn*, 337 F. Supp. 573, 574 (M. D. Tenn. 1972)(The TWIs were to increase African-American recruitment, employment, and financial aid).

24. University of Tennessee, 597 F.2d at 1060 (describing the 1969 plan).

25. Dunn, 337 F. Supp. at 574.

26. *Id.* at 574-75.

27. Dunn, 337 F. Supp. at 576.

28. *Id.* at 581.

29. *Id.* at 576.

30. *Id.* at 581-82.

31. University of Tennessee, 597 F.2d at 1062.

32. Blanton, 427 F. Supp. at 647 n.6.

33. *Id.* at n.7.

34. *Id.* at 648. The late Senator Avon Williams, attorneys from the New York office of the NAACP Legal Defense Fund and Richard Dinkins, now a judge on the Tennessee Court of Appeals, represented the Richardson intervenors.

35. University of Tennessee, 597 F.2d at 1061-62.

36. *Id.* at 1062.

37. Blanton, 427 F. Supp. at 652.

38. *Id.* at 656.

1990 Gov. McWherter starts $127 million building and renovation plan

1992 Supreme Court orders state to get rid of vestiges of segregation.

1992-99 State attempts unsuccessfully to comply with 1992 Supreme Court order through implementation of first settlement agreement.

1999 Carlos González appointed to mediate.

2001 Consent decree approved on Jan 4 and González appointed court monitor.

2006 Wiseman grants uncontested final order of dismissal.

39. *Id*. at 661.

40. *Id*. at 652.

41. *Id*. at 661.

42. *Geier v. Alexander*, 593 F. Supp. 1263, 1266. (M.D. Tenn. 1984), aff'd 801 F.2d 799 (6th Cir. 1986).

43. *Id*. quoting Dunn, 337 F. Supp. at 576.

44. Alexander, 593 F. Supp. at 1266.

45. At the time of the merger, 58 percent of administrators at TSU and UTN were African-American; by 1983 African-Americans accounted for 72.6 percent of the administrators at the merged institutions. That same year, TSU employed more than 77 percent of all black faculty in the TBR system. At all other TBR institutions combined there were only 44 black faculty members. *Id*.

46. The McGinnis intervenors were represented by John Norris and Aleta Trauger, now a judge on the United States District Court for the Middle District of Tennessee.

47. Renee Vaughan, "Judge Says TSU Must Integrate," *The Tennessean*, July 21, 1985, at A1. See also Dwight Lewis, "Wiseman Is Wrong, Humphries Contends," *The Tennessean*, May 5, 1985, at A1.

48. Alexander, 593 F. Supp. at 1273.

49. *Id*. at 1269.

50. *Id*. at 1272.

51. *Id*. at 1274.

52. William E. Schmidt, "Desegregation Worries a Black College," The *New York Times*, Oct. 14, 1984, http://www.nytimes.com/1984/10/14/weekinreview/desegregation-worries-a-black-college.html (last visited Oct. 25, 2017); Robert Sherborne, "Whites to Control TSU, Alumni Unit Fears," *The Tennessean*, August 18, 1985, at A1; Dwight Lewis, "Farrakhan Calls TSU Racial Quota Ruling Hypocrisy," *The Tennessean*, October 28, 1990, at A1; Charles Whitaker, "Is There a Conspiracy to Take Over Black Colleges?," *Ebony*, Oct. 1986, at 83.

53. Reginald Stuart, "The End of a Journey," *Diverse*, Oct. 19, 2006 at 75.

54. *Id*.

55. *Id*. By 2006, virtually every building on campus had been renovated and several new buildings constructed.

56. The stipulation required that seventy-five African-American students from across the state be selected to participate in a multi-year summer program designed to prepare undergraduate students for the rigors of law or medical school. Upon graduation from college with a minimum required GPA and the successful completion of the pre-professional program, the students would be offered admission as first-year professional students. See *Alexander*, 801 F.2d at 802-03. The United States objected to the program, arguing that there was no basis for the expressed racial criterion since African-Americans had "never been victims of discrimination in professional school admissions[.]" *Id*. at 803. The Sixth Circuit rejected the United State's appeal and affirmed the stipulation's pre-professional program.

57. On at least two occasions and at the urging of the McGinnis intervenors, Judge Wiseman refused to approve the hiring of high-level university and community college officials since the hiring authority could not establish they had attempted to recruit African-American candidates for the positions.

58. *United States v. Fordice*, 505 U.S. 717 (1992).

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Long Journey *continued from page 23*

59. *Id* at 729.

60. *Id*. at 729-30.

61. "That an institution is predominantly white or black does not itself make out a constitutional violation." *Fordice*, 505 U.S. at 743. Concurring in the opinion, Justice Thomas wrote that since the decision "does not compel the elimination of all observed racial imbalance, it portends neither the destruction of historically black colleges nor the severing of those institutions from their distinctive histories and traditions …. It would be ironic, to say the least, if the institutions that sustained blacks during segregation were themselves destroyed in an effort to combat its vestiges." *Id*. at 745, 749 (Thomas, J., concurring).

62. The statement of Gov. Sundquist was recounted by Justin Wilson to the author on numerous occasions. Mr. Wilson also repeated the governor's words on the record at the time of the court's approval of the 2001 consent decree.

63. Pursuant to *Tenn. Code Ann.* § 20-13-103, before the consent decree could be presented to the court, the governor, the lieutenant governor, the speaker of the house and the Tennessee attorney general each had to sign the agreement authorizing the settlement.

64. *Geier v. Sundquist*, 128 F. Supp.2d 519, 521 (M.D. Tenn. 2001).

65. The improvement of other-race faculty and administrative hiring as well as the recruitment and retention of other-race students across all institutions was the statewide focus of the agreement. The section dealing with Middle Tennessee contained provisions intended to enhance, among other things, the administrative operations of Tennessee State; revitalize TSU's Avon Williams Campus located in downtown Nashville (the old UTN); revitalize the university's outreach to nontraditional working students; establish a college of public service and urban affairs; and create an endowment for educational excellence. The agreement also permitted MTSU to offer several Ph.D. programs. New procedures for the approval of academic programs by the TBR were also established.

66. Monitoring was largely devoted to keeping the parties and the attorneys on task so that the ambitious five-year schedule could be met. This required constant oversight so that problems were resolved in a timely manner without judicial intervention. Gov. Phil Bredesen noted at the end of the case that the monitorship was so well executed that the state "never had to go to court once to resolve disagreements." See Statement of Governor Phil Bredesen made in Nashville, Tennessee, on Sept. 21, 2006, at the press briefing announcing the end of the *Geier* case.

Judge Wiseman also felt that the monitorship and its execution were central to the successful conclusion of the case. He described it as "probably the single most significant factor in bringing about [the case's end]." *Geier v. Bredesen*, 453 F. Supp.2d 1017, 1019 (M. D. Tenn. 2016).

67. Bredesen, 453 F. Supp.2d at 1018-19.

PHOTO CREDITS: Special thanks to Tennessee State University and Vanderbilt University for providing photos. TSU photos taken by John Cross; George Barrett and Rita Geier photos by Sandy Campbell.