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9-9-1980

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J. Clay Smith Jr.

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#### Recommended Citation

Smith, J. Clay Jr., "The Federal Affirmative Effort on Behalf Of Historically Black Colleges and Universities" (1980). *Selected Speeches*. 13.

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DR. J. CLAY SMITH, JR.  
COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
before the  
CORPORATION FOR THE ADVANCEMENT OF  
EXPERIENTIAL LEARNING PROGRAMS  
Atlanta, Georgia

September 9, 1980

THE FEDERAL AFFIRMATIVE EFFORT ON BEHALF OF HISTORICALLY  
BLACK COLLEGES AND UNIVERSITIES

Having graduated from Howard University's Law School, I cannot help taking this opportunity to share with you my deep concern for the survival of historically Black colleges. The significant contribution that Black colleges have made to this nation can be best appreciated by looking at their beginning.

At the aftermath of emancipation and the Civil War there were 4 million Black freedmen. Since the formal education of slaves was generally forbidden by law, whatever education slaves had received was informal and superficial. The sporadic education a few slaves received was provided by benevolent societies, humanitarian whites, literate slaves, an occasional slave owner who educated a slave in order to increase his or her economic value, and free blacks who were allowed to teach certain house slaves to read and write.

At the time of emancipation, approximately only 2 or 3 percent of the Black population was able to read and write. It is also estimated that only about 5 percent of the total Black population of 4½ million was literate in 1880.

During the decade following the Emancipation Proclamation,

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it became clear that the education of Blacks was absolutely essential if they were to hold onto their precious, tenacious freedom or even survive in the highly charged, anti-federal and anti-Black atmosphere which prevailed throughout the South. There was wide belief that there was an urgent need to establish schools directly relevant to the conditions and problems of the new constitutionally recognized Black citizen. The feeling of the time was that Black citizens desperately needed to develop, as quickly as possible, a cadre of lawyers, teachers, ministers, physicians, businessmen and leaders devoted to racial uplift and capable of ministering to the many needs of the illiterate, disorganized, disenfranchised, oppressed and frightened ex-slave population.

The daring and much-debated experiment in the education of the new Black citizens was surprisingly successful from the start. Despite strong opposition from whites in all walks of life and dire poverty on the part of Blacks, large numbers of parents manifested a determined willingness to send their children to these historic Blacks schools.

While only about 3 to 5 percent of the adult Black population was literate in 1869, by 1900 the rate of literacy had increased to about 55 percent; by 1920 it was nearly 77 percent; and today only about 5 percent of the adult Black population can be classified as illiterate. Therefore, during their first century of existence, Black colleges, with little or no cooperation from white colleges, trained Black teachers who were able to reverse the rate of literacy among Blacks

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from 5 percent literate to only 5 percent illiterate. Today, while the average educational level of Blacks is reportedly below that of whites, the gap between them has been constantly narrowed so that by 1970 the medium educational level for whites was 12.1 years of schooling and for Blacks, 9.3 years.

From a very uncertain beginning a little over a century ago--despite many difficult and unique obstacles, including chronic poverty--private and public Black colleges have somehow managed to make a distinct, basic and lasting contribution to the survival and progress of Black Americans and to the enrichment and strength of this nation.

The Federal government in recent years has shown great sensitivity to the plight of historically Black colleges. Dollar obligations to historically Black institutions increased in fiscal year 1979 by 15.5 million dollars, an increase of 4.1%. Of the 9 billion dollars obligated to education in fiscal year 1979, historically Black institutions received nearly 4 million dollars, or 4.4% of the total obligations. As a percentage of total obligations, funds to historically Black institutions increased at eleven agencies.

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Seventeen\* departments and agencies increased their dollar obligations to historically Black institutions in fiscal year 1979. The combined increases totalled 18 million dollars.

### \*Ranking of Selected Federal Departments and Agencies By Percentage Increase in Funding to Historically Black Institutions

| Department/Agency                                    | Total Obligations to<br>Historically Black Institutions |                  | Percentage<br>Increase |
|--|---|------------------|------------------------|
|  | Fiscal Year 1978  | Fiscal Year 1979 |                        |
| 1. Department of Commerce                            | \$ 607,235  | \$ 4,114,594     | 577.6                  |
| 2. Appalachian Regional Commission                   | -0-   | 660,000          | 100.0                  |
| 3. Department of Labor                               | 4,328,697   | 8,436,777        | 94.9                   |
| 4. Department of Energy                              | 1,259,000   | 2,077,000        | 65.0                   |
| 5. National Endowment for the Humanities             | 970,044   | 1,504,004        | 55.0                   |
| 6. National Endowment for the Arts                   | 79,000  | 107,060          | 35.3                   |
| 7. Department of Justice                             | 1,473,454   | 1,955,322        | 32.7                   |
| 8. Department of Interior                            | 403,880   | 527,000          | 30.5                   |
| 9. Veterans Administration                           | 494,303   | 637,125          | 28.9                   |
| 10. ACTION   | 471,254   | 604,908          | 28.4                   |
| 11. Department of Housing and<br>Urban Development   | 7,443,000   | 9,230,000        | 24.0                   |
| 12. National Aeronautics and<br>Space Administration | 2,701,000   | 3,333,000        | 23.4                   |
| 13. Department of Defense                            | 2,676,260   | 2,961,578        | 10.7                   |
| 14. Department of Agriculture                        | 25,653,388  | 28,101,601       | 9.5                    |
| 15. Department of Health,<br>Education and Welfare   | 315,845,828   | 318,178,000      | 0.7                    |
| 16. Community Services Administration                | 2,114,161   | 2,122,857        | 0.4                    |
| 17. Small Business Administration                    | 158,000   | 158,500          | 0.3                    |

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Eleven departments and agencies exceeded their projected fiscal year 1979 funding goals to historically Black institutions. Ten of the 23 departments and agencies provided 97% of the funds obligated to all colleges and universities in fiscal year 1979.

In fiscal year 1979, 53.4% of the federal support received by historically Black institutions was in the form of student assistance. By contrast, 36% of the funds awarded to higher education institutions in general is in the form of student assistance.

Historically Black institutions received 1.3% or 53 million dollars of the 4 billion dollars spent by the federal government at colleges and universities for research and development. Research and development obligations represent 13.4% of all federal funds received by historically Black institutions.

Projected obligations to historically Black institutions for fiscal year 1980 total 472.9 million dollars or 4.8% of federal obligations projected for all colleges and universities. The total amount projected for historically Black institutions represents an increase of 78.5 million dollars over fiscal year 1979.

In fiscal year 1979, obligations to colleges and universities from 23 departments and agencies increased from 7.7 billion dollars in fiscal year 1978 to 8.9 billion, an increase of 16.1 percent. Total obligations to historically Black institutions increased from 378.9 million dollars in

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fiscal year 1978 to 394.4 million dollars, an increase of 4.1 percent.

Of the 394 million dollars obligated to historically Black institutions, 210 million dollars, or 53% of these funds were in the form of student assistance. About 90% of the students in attendance at historically Black institutions are eligible for federal assistance as compared to 25% of the student population at all colleges and universities. In 1976 almost 50% of the Black freshmen were from families with incomes of \$8,000 or less, compared with 7% of white freshmen.

Historically Black institutions received 9.6 million dollars, or 7.1% of the 134.7 million dollars awarded to colleges and universities for facilities and equipment in fiscal year 1979. Eighty-seven percent (87%) of those funds came from the College Housing Loan Program and the Department of Housing and Urban Development.

Historically Black institutions received 121.2 million dollars of 1.5 billion dollars, or 7.9% of the funds obligated to other forms of institutional assistance. Seventy-five percent (75%) of this institutional assistance originated at the Department of Health and Human Services. The most prominent source of institutional support to historically Black institutions is the Developing Institutions Program (Title III) in the Office of Education. Other important sources of support include funds to Black land-grant institutions from the Agriculture Department and the Minority Institutions Science

Foundation.

Executive Order

On August 8, 1980, in recognition of the significant role that Black colleges play today, the President of the United States issued Executive Order 12232. That Executive Order requires eight concrete steps to be taken which are intended to "overcome the effects of discriminatory treatment and to strengthen and expand the capacity of historically Black colleges and universities to provide quality education." These steps are:

1. The Secretary of Education is required to implement a Federal initiative designed to achieve a significant increase in the participation by historically Black colleges and universities in federally sponsored programs. This initiative will seek to identify, reduce, and eliminate barriers which may have unfairly resulted in reduced participation in, and reduced benefits from, federally sponsored programs.
2. The Secretary of Education, in consultation with the Director of the Office of Management and Budget and the heads of the other executive agencies, is required to establish annual goals for each agency. The purpose of these goals will be to increase the ability of historically Black colleges and universities to participate in federally sponsored programs.
3. Executive agencies are required to review their programs to determine the extent to which historically Black colleges and universities are unfairly precluded from participation in federally



sponsored programs.

4. Executive agencies must identify the statutory authorities under which they can provide relief from specific inequities and disadvantages identified and documented in the agency programs.

5. Each executive agency is required to review its current programs and practices and initiate new efforts to increase the participation of historically Black colleges and universities in the programs of the agency. Particular attention should be given to identifying and eliminating unintended regulatory barriers. Procedural barriers, including those which result in such colleges and universities not receiving notice of the availability of federally sponsored programs, should be eliminated.

6. The head of each executive agency is required to designate an immediate subordinate who will be responsible for implementing the agency responsibilities required by the executive order. In each executive agency there shall be an agency liaison to the Secretary of Education for implementing the Executive Order.

7. The Secretary of Education is required to insure that an immediate subordinate is responsible for implementing the provisions of the executive order. Moreover, the Secretary of Education must insure that each President of a historically Black college or university is given the opportunity to comment on the implementation of the initiative established by the Executive Order.

8. The Secretary of Education must submit an annual report

to the President. The report shall include the levels of participation by historically Black colleges and universities in the programs of each executive agency. The report will also include any appropriate recommendations for improving the federal response directed by the Executive Order.

I would like to now give you an overview of the functions and responsibilities of the EEOC and the role that it can play in aiding historically Black colleges and, more importantly, the students that they serve.

The Equal Employment Opportunity Commission was initially set up to enforce Title VII of the Civil Rights Act of 1964. By amendments in 1972, Title VII was amended to apply to the Federal government. And, unlike in the private sector, the 1972 amendments made affirmative action mandatory in the Federal sector.

Generally, Title VII, and anti-discrimination laws in general, prohibit employers from making employment decisions based on race, sex, religion, etc. These prohibitions apply not only to intentional conduct but also to unintentional conduct which has the effect of treating one group less favorably than others.

Unlike non-discrimination, affirmative action is efforts designed to undue present effects of past discrimination. Therefore, affirmative action permits race, sex, etc., to be a factor in employment decisions when done to undue past discrimination.

In the federal sector, affirmative action is required by

Title VII. In addition to affirmative action, an amendment to the Civil Service Reform Act, known as the Garcia Amendment, requires federal agencies to embark upon an affirmative recruitment program in order to increase the number of minorities and women in the pool of applicants who are on lists from which federal agencies recruit.

No matter how good the intentions of a potential employer are in hiring Blacks, if a potential employee does not have the basic educational background, affirmative action may not be sufficient. Therefore, Black colleges must forever be aware of affirmative action and areas where Blacks are underrepresented because of the lack of educational backgrounds. By gearing your curriculum to increasing the pools of Blacks in areas in which we are underrepresented, you can play a role in increasing the availability.

Black colleges can also aid the EEOC in dealing with employment discrimination by bringing to our attention employers and industries where Blacks are not being recruited and hired. For example, in many areas of the country with Black colleges, government agencies may still be slow in their recruitment of minorities. In fact, your placement offices may be able to establish a pattern and practice of various agencies not hiring graduates in particular areas. It is highly important for appropriate persons to bring this to the attention of agency heads so that your graduates will be considered in the available pool of potential employees under Federal Affirmative Action programs.

Black colleges are one of the most important affirmative action resources in the nation. These colleges beckon to the public and private sectors for utilization as recruitment resources.

In conclusion, I will leave you with a quote from the case of Adams v. Richardson, in which I filed an amicus curiae brief on behalf of the National Association for Equal Opportunity in Higher Education. This quote fully supports the basic purpose of the recent Executive Order and I am honored to have played a role in the Adams litigation. The court in Adams v. Richardson, stated:

"A predicate for minority access to quality post graduate programs is a viable, co-ordinated state-wide higher education policy that takes into account the special problems of minority students of black colleges . . . these black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education." Adams v. Richardson, 480 F.2d 1159, 1165 (D.C. Cir. 1973).