

November 4, 2005

President Stephen J. Kopp
Office of the President
Marshall University
1 John Marshall Drive
Huntington, West Virginia 25755

Sent by U.S. Mail and Facsimile (304-696-6453)

Dear President Kopp:

As you can see from the list of our Directors and Board of Advisors, FIRE unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned by the possibility that Marshall University is unlawfully discriminating against students on the basis of race in class enrollment. According to Marshall's website, certain sections of an introductory course for first-year students, University Studies 101, contain racial restrictions which limit enrollment to African American students only. No matter what Marshall University's intentions were when it created these class sections, for a public institution to offer racially segregated courses on any subject reflects a policy that is misguided, unconstitutional, and in violation of numerous state and federal laws.

This is our understanding of the facts. Please inform us if you believe we are in error. According to the "UNI 101" webpage, University Studies 101 is a class for first-year students that is designed to provide students with "an opportunity to adjust to the academic and social environment of college under the guidance of a faculty/staff mentor and in the presence of a small group of peers." Some sections of University Studies 101 are restricted by academic major or college affiliation; for instance, sections are limited to "College of Fine Arts Students Only," or "Criminal Justice Majors Only." However, several sections, specifically those designated for "Outstanding Black High School Students Only" and "African American Students Only," are restricted based on students' racial background.

As a public institution of higher education, Marshall violates the U.S. Constitution as well as its own policies when it excludes any student from a class on the basis of that student's race. The legal and regulatory prohibitions on such practices are considerable. The 1954 decision of the U.S. Supreme Court in *Brown v. Board of Education* confirmed that racially segregated classes violate the Equal Protection Clause of the Fourteenth Amendment, while Title VI of the Civil Rights Act of 1964 forbids institutions receiving federal monies from discriminating "on the ground of race, color, or national origin." In addition, Marshall's own "Non-Discrimination Policy" states, "The University ensures equality of opportunity and treatment in all areas related to student admissions, instructions, employment, placement accommodations, financial assistance programs, and other services." While FIRE makes no assertion that Marshall's intention in creating these racially segregated classes is motivated by any racial animus, under the law, as well as under its own rules, Marshall University simply cannot exclude any students from class selections based upon their race or ethnicity.

Marshall's segregated class sections not only fail these legal and regulatory tests, but also contradict the university's express objective of promoting pluralism and understanding among students. In its mission statement, Marshall vows to "educate a citizenry capable of living and working effectively in a global environment," while its "University Creed" states that as a "pluralistic community ... Marshall University provides more than an intellectual experience. It also provides the opportunity to further the social growth of students by maintaining an environment conducive to learning **how to get along with peers and how to handle differences such as race, ethnicity, and gender**" (emphasis added). How can the value of pluralism and of learning to "handle differences" be taught through the racial isolation of students? Allowing only students of a certain race to enroll in a class necessarily entails excluding students from that class—students who may very well identify with and benefit from the lessons being taught in the racially restricted class. Rather than cultivating a sense of community and encouraging inclusion, Marshall University's practice of racial restrictions risks sending the message that segregation is an acceptable and preferable solution to living in a diverse environment, whether within the university community or in the wider society.

In a free society, students are able to associate based upon their interests, race, gender, or beliefs, and the university is bound to respect those individual choices. Yet state institutions may not impose race-based restrictions on how students can associate with each other. The history of the American educational system is wrought with shameful practices employing racial categorizations. By offering segregated introductions to the university community, Marshall revisits the errors of the past by reducing students to the sum of their blood and ancestry. While the goal of these classes may be to ease students' transition into college life, the result is that the university endorses the division and categorization of students based upon the color of their skin.

FIRE requests that Marshall University end the racial restrictions on enrollment in sections of University Studies 101 as well as on any other class which might feature such restrictions, and that the university reiterate its commitment to treating all students equally, regardless of race or ethnicity. FIRE is committed to using all of its resources to ensure that the civil

rights of Marshall University's students are respected and preserved. We request a response on this matter by November 18, 2005.

Sincerely,

Robert L. Shibley
Program Manager

cc:

Sarah Denman, Provost and Senior Vice President for Academic Affairs, Marshall University

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