

AFFIRMATIVE ACTION AND THE FUTURE OF U.S. HIGHER EDUCATION

A Collection of Remarks

Delivered at the NACME-GEM Conference
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Edited by
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On May 29, 2003, the NACME-GEM Conference, "Engineering Collaborations: Preparing Technology Talent for the Economic Turnaround," devoted its program to the imminent Supreme Court ruling on the University of Michigan admissions cases. While the outcome of those decisions is well-known, the issues they embody are likely to persist. The following collection is an abridged version of remarks made in various sessions – beginning with excerpts of the Keynote Address, followed by acceptance of the Reginald H. Jones Distinguished Service Award, and concluding with introductions (edited) and observations (reproduced in their entirety) made in the President's Plenary. NACME has assembled these contributions to preserve a record of the conviction and advice offered by academic leaders at a particularly volatile juncture in the history of U.S. higher education.

The Power of Oneness

John Brooks Slaughter
NACME President and CEO

. . . What are we going to do with the changing environment we face? How do we deal with the continuing economic downturn in which Fortune 500 company after company has reduced or eliminated its philanthropic support for the issues that bring us together today? How do we deal with the legal threats we face that could bring to an end more than thirty years of painful, slow and grudging progress toward creating an environment of opportunity and respect for those who have been denied them for so long? What must we do to help those children imprisoned in the poor schools and the dark corridors of life that have become their fate? How do we help them envision the positive options there are for them and how do we ensure that those options will be present for them when they are ready to explore opportunities. What changes are we willing to make to fulfill our respective missions so that we can move forward in helping to produce the richly diverse

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and highly skilled scientific and technological workforces America needs now and will need even more in the future?

. . . Dr. Shirley M. Jackson, president of Rensselaer Polytechnic Institute and a champion on the cause that brings us together has used the expression “quiet crisis” to define the gap between the nation’s growing need for scientists, engineers and other technically skilled persons and its production of them. This “gap”, Shirley asserts in a document she wrote for BEST (Building Engineering and Scientific Talent), a public-private partnership dedicated to building a stronger, more diverse science, engineering and technology workforce, represents a shortfall in our national scientific and technical capabilities.

Given the existence of the gap, which no one denies, why is it so difficult for politicians and public policy makers to admit that rather than importing talent and exporting jobs we would be far better off if we assisted those who have been historically underrepresented, underrespected, and undervalued in entering the SET workforce.

Why can’t the U.S. Government focus more of its energy and resources on improving the educational outlook for poor and minority children rather than filing an *amicus* brief accusing the University of Michigan of running a quota system? Why can’t school districts assign the best teachers to the schools that need them most? Why is it that less than a quarter of America’s research universities have demonstrated a commitment to recruiting, admitting, retaining, educating and graduating minority scientists and engineers? Why is it that the diversification of college and university faculties has seen little or no progress in the past twenty years? Do we not know that a key to increasing the numbers of women and minority graduates in rigorous, demanding science and engineering programs is the presence of people in front of the classroom who look like them and who can provide the mentoring and role modeling important for success?

Do our educational and political leaders not know these things? I often muse about how different it would be if our educational institutions were as interested in diversity as they are in being ranked in the top 25 of US News and World Report’s Best Colleges and Universities or perhaps, even more importantly, playing in the NCAA Final Four.

. . . We all know that the presence of African Americans, American Indians and Latinos in Science, Engineering and technology remains far below their respective proportions of our nation’s population. This is the newest version of Gunnar Myrdal’s “American Dilemma” and is the result of our sordid history of discrimination and exclusion and its after effects. Today, these groups constitute 30 percent of the undergraduate student enrollment in America but only 10 percent of baccalaureate degree recipients in the physical and life sciences and engineering. The reasons for this are many, including poor public school preparation, lack of knowledge about the sciences and engineering as possible careers, little or no encouragement from teachers and counselors, and the lack of adequate funds to enroll and stay in college until graduation. After college, many minority science and engineering graduates become discouraged about their choice of

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profession because of the hostile climate they too often encounter in some industrial and corporate settings. . .

You must be as fearful as I am about the possible outcomes of the Supreme Court deliberations on the University of Michigan race – conscious admissions policies. . . We need to prepare for the eventuality that our programs, which are focused on African Americans, Latinos and American Indians, will be questioned and, even, attacked. Although we can forcefully argue that our missions support what is best for America it is not an argument that convincingly withstands the rhetoric of those who argue that race-consciousness equates to racial discrimination. The root of our argument is one of morality. But as former Secretary of Labor Ray Marshall once put it, “The problem with moral arguments is that they only work with people who are moral.”

In spite of the vulnerability of our position, we must remain true to the belief that access to the educational opportunities available in our nation’s selective universities is essential if underrepresented minorities are to have an opportunity to contribute to strengthening America’s scientific and technological capabilities. We can no longer afford the loss of creativity, productivity and talent that results from policies and practices that inhibit the participation of our country’s most valuable resource – our youth. . .

Paraphrasing James Farmer, “If not parity, what? If not now, when? If not us, who?”

Charles Vest has been president of the Massachusetts Institute of Technology for 13 years. Before that, he spent his entire academic career, including the role of Provost, at the University of Michigan. A member of the National Academy of Engineering, he served on the President’s Committee of Advisors for Science & Technology, or PCAST, where I met him.

I recall at a private meeting his outrage in 1997 when, in the wake of the Adarand decision, which banned federal minority-targeted programs, he was told, as chair of a committee he chaired at a federal R&D agency, that the agency could no longer offer fellowships created to support minority scientists and engineers. He protested to President Clinton’s Science Advisor, Jack Gibbons, saying, “We can only pick three, but there are 100 who deserve such funding. Now, even the three are being punished. And the science and engineering workforce loses.”

Chuck Vest has been a beacon on diversity, whether trying to remedy documented gender discrimination in the School of Science faculty, or persisting in the support of talented minority high school students aiming for admission to MIT. As he himself has observed, the racial and ethnic diversity of the MIT student body “is not a natural occurrence. It is the result of a determined, conscientious effort, over more than three decades, often against seemingly insurmountable odds.”

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**Reginald H. Jones Distinguished Service Award:
Acceptance Remarks**

Charles M. Vest
President, Massachusetts Institute of Technology

Receiving this award from NACME means more to me than any of you can imagine. But I accept it on behalf of the many people who have shaped my understanding, who have done the hard institutional work at MIT, and also at the University of Michigan, that is the basis for your recognition.

In doing so, I recognize all those who provided me the very opportunity to live the American Dream that we in NACME and GEM strive to make available to others.

And I accept it knowing that this is a complicated time — as we await the decision of our Supreme Court in the critical University of Michigan admissions cases, and when MIT has had to take some controversial steps into a new legal landscape in response to attacks by the U.S. Department of Education on our minority outreach and bridge programs.

During the last decade, the federal government has diluted its commitment to creating opportunity for minority citizens, but by and large, America's great corporations have stood strong and filled the leadership gap. Corporations have long supported both our admissions policies and our outreach programs. They have not done so because they are liberals or conservatives, Democrats or Republicans. They support them because they understand that the world is racially diverse – and that if they are to know their customers, produce well-designed, relevant products, and market them effectively, they need the perspectives and experiences of a diverse workforce and leadership.

So it is fitting that the Reginald Jones Award memorializes a visionary leader from American industry, and is funded by the General Electric Foundation. GE is a company long committed to diversity and opportunity.

As I stand before you today, I would like to give you a sense of where I have come from. I attended racially segregated schools until I was in junior high school. Our schools were desegregated in one fell swoop a year or so ahead of *Brown v. Board of Education*.

I came quickly to value and learn from the new classmates who joined us. I remember that our high school football coach drilled us on how to protect our black teammates should they be attacked in some of the more rural towns in which we were to play.

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My first science teacher was black. My high school physics teacher was a woman. My closest friend in graduate school was from India. My PhD advisor was from Turkey. My closest colleagues as a young professor were from Taiwan, Hungary, and Turkey. My own father grew up in a German-speaking household.

And yet, when I began my teaching career as a graduate student teaching fellow and then as an assistant professor at the University of Michigan in the 1960s, it was extraordinary if I had more than one African American student in my classes every couple of years. In fact, it was extraordinary if I had more than one or two women students in a class. And if I had either, it was a lead pipe cinch that they would be one of the best two or three students in the class, because only through unusual drive and commitment would these students have come to study engineering.

In that context, when I look today at an MIT student body whose undergraduates are 42 percent women, 6 percent African-American, 11 percent Latino, and 2 percent Native American — a student body that is remarkably diverse in so many other dimensions as well — it seems to me that a miracle has happened.

But it is not a miracle. It is the result of determined, conscientious effort, over more than three decades, often against seemingly insurmountable odds. It is the result of institutional leadership and occasional courage. It is a result of the determination of innumerable families and communities.

I know that I am richer, that my world-view is more balanced, and that my ability to do my job and live my life has been greatly enhanced because of my own experiences that can be filed under the heading of diversity. We must all work to ensure that the generations to come can experience the value of diversity as I have, and that they have a field of opportunity as broad as I was given.

But race still matters in America. We haven't reached the day when we truly have a race-blind society. We hope we will, but we haven't. So we must not put our head in the sand, declare victory, and let 30 years of progress slide through our fingers.

NACME, GEM, MIT and all of American industry and academia must continue the hard, day-to-day work that will provide for a diverse science and engineering workforce — and leadership — in the future. We must do so in order to provide our next generation with a wide field of opportunity, but we also must do so because it is essential to our future economic strength, health, security and quality of life. Thank you.

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Introduction

Daryl E. Chubin

NACME and GEM are pleased to bring you this panel for two reasons -- first, the importance of the issue at this time of unrest over affirmative action in higher education admissions – a window on potentially profound change paralleled by the Bakke case a quarter-century ago, and second, because the leaders who will address you today have been in the forefront of the struggle to maximize educational opportunity, achievement, and excellence.

I offer three empirical tidbits:

- *By 2015, the nation's undergraduate population will expand by over 2.6 million students, 2 million of whom will be students of color.*
- *The projected gaps between 18-24 year-old population share and minority presence on campus in 2015 are startling: Latino students would be underrepresented by over 500,000, African American students by over 200,000 (W.S. Swail, "Higher Education and the New Demographics: Questions for Policy," Change, July/August 2002, pp. 15-23).*
- *Today, women, underrepresented minorities, and persons with disabilities comprise more than two-thirds of the U.S. workforce, but hold only about one-quarter of the science, engineering, and technology jobs (NSF, Women, Minorities, and Persons with Disabilities in Science and Engineering: 2002).*

Given these realities, the question posed in the Michigan cases – whether the use of racial preferences in admissions violates the Equal Protection Clause of the Fourteenth Amendment – makes Title VI of the Civil Rights Act of 1964 seem a lofty yet unfulfilled aspiration for our democracy.

Almost 40 years later, let us ponder together this afternoon the following contingency:

- *If affirmative action is no longer a viable legal asset,*
- *if it is resented by a majority of the US population,*
- *if it stigmatizes those it was intended to help due to the unfortunate rhetoric on quotas and preferences, then what?*

Arguably, affirmative action has been demonized by critics of the college admissions process. Any college admissions policy that converts advantages rooted in class, neighborhood, and institutional legacy into entitlement sanctions the view that we are a color-, gender-, pluralism-blind society. We are not yet so blind.

Disadvantages accumulate. Therefore, selective colleges, at least since the 1978 Bakke Supreme Court decision, have conscientiously sought balance in undergraduate

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admissions. Their decisions seek heterogeneity by athletic or musical prowess, academic accomplishment, and countless other considerations including race, ethnicity, and gender.

For this reason, represented among the 60 briefs submitted to the Supreme Court in support of the University of Michigan college and law school admissions cases are 300 organizations that read like a “who’s who” of America – corporations (including many NACME and GEM Board companies), military leaders, professional associations, elected officials. In one brief, NACME joined with, among others, MIT, Stanford, and the National Academies of Science and of Engineering.

This is hardly special pleading by U.S. universities. But don’t take my word for it. Read Bowen and Rudenstine in the Feb. 7, 2003, issue of The Chronicle of Higher Education, or Robert Zemsky in the May 30, 2003 issue of The Chronicle.

***Brit Kirwan** became the third chancellor of the U. of Maryland System in August 2002. Previously, he had served as President of the College Park campus and most recently as President of Ohio State U. He was recently appointed to the Board of Advisors on Historically Black Colleges and Universities. You can read more of his biography in the conference book.*

What I’d like to note, for historical purposes, is that in addition to Prop 209 in CA, Hopwood in TX, and Initiative 200 in WA State (among others) – all of which center on admissions – there is another issue, that of financial aid targeted to underserved students. In 1995, the U. of Maryland’s Benjamin Banneker Scholarship Program (offering full support for four years to high-achieving high school students) was combined with another merit-based program because the 4th Circuit Court of Appeals had ruled Banneker unconstitutional because only African American students were eligible for the aid that Dr. Kirwan’s university argued was necessary to promote diversity on campus.

As the assault on precollege bridge programs aimed at readying high-achieving underrepresented middle and high school students escalates, Dr. Kirwan has said, “[U]niversities should do what they think is right. If it leads to an investigation by the Office of Civil Rights, then so be it. To compromise because of the threat of a complaint would be inappropriate.”

**Why We Must Preserve Affirmative Action and
Foster Diversity in Higher Education**

William E. Kirwan
Chancellor, The University of Maryland System

Thanks to both NACME and GEM. The efforts of these two organizations for more than a quarter of a century have substantially increased the representation of minority men and women in the fields of engineering, mathematics and the sciences.

NACME and GEM are owed a debt of thanks – not only from those they have directly assisted, but also from the entire nation because their noble efforts have enriched us all.

As we know, the achievements and advancements we have seen in creating more diverse university communities are now at great risk. With the Supreme Court currently reviewing the University of Michigan’s admission policies—in effect, *re*-considering the *Bakke* decision—there is grave concern about our ability to continue an indispensable tool – affirmative action – in our efforts to be more inclusive.

Over the past few months I have had the opportunity to be a respondent after Michigan President Mary Sue Coleman outlined her university’s position at the American Council on Education’s annual meeting.

I took part on a panel with Dr. Cathy Horn of the Harvard University Civil Rights Project, which recently completed an extensive study on the impact of replacing Affirmative Action with alternative admissions policies.

I have written opinion pieces for several newspapers on the topic we are discussing today.

So, it is indeed a pleasure to be here this afternoon and to take part in the on-going national dialogue about the future of affirmative action and diversity programs on our campuses, a topic of vital importance to our universities and our nation.

I am especially pleased to be joining my two fellow panelists both of whom have distinguished records in promoting diversity at their institutions. I look forward to hearing their perspectives on this important topic.

The implications of the Michigan case for higher education are sweeping. The make-up of college campuses in the coming decades could well be determined by the decision the court makes.

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If the Court reverses the *Bakke* decision, it will in essence be stating that achieving diversity is no longer a compelling national interest in our society. Such a result would be both alarming and in conflict with the views of a significant proportion of Americans.

The fact that so many pillars of American society—education leaders, major corporations, labor organizations, the American Bar Association, and former high-ranking military officers—are supporting *Bakke* and Michigan’s policy specifically suggests not only the importance of achieving a more inclusive society but also the critical role of higher education in reaching this goal.

From my perspective, there are three key reasons why we must preserve affirmative action and foster diversity in higher education.

The first is a point that I believe does not get enough attention in the current debate. . . it’s the *moral* imperative for affirmative action.

We need to remember that this issue was not always a divisive one in America. Affirmative action began over 30 years ago, under a Republican president, and it enjoyed bipartisan support. The very roots of affirmative action lie in the basic values of justice and equality that define our society.

We hear a lot today about “color-blind policies and practices,” but the advocates for such practices conveniently ignore the reality of life in America today. Yes, we would all like to live in an America where race, ethnicity and gender really do not matter as individuals attempt to climb our nation’s ladder of opportunity. The sad truth is, however, that they still do matter and in ways that are disproportionately harmful to minorities and women.

Anyone who thinks race no longer matters should look at their neighbors when they drive home at the end of the day. Housing patterns in most of this country are still divided—to a large extent – along lines of color.

Anyone who thinks race and gender no longer matters should read the numerous studies that show the disproportionate success white males have in securing loans over minorities and women with similar financial circumstances.

And anyone who thinks race no longer matters should compare the average incomes of white males with those of women and people of color, even when they hold similar positions.

True, we have seen real progress in becoming a more inclusive society. Looking at test scores or income levels or employment rates, the historic gaps between whites and minorities have been closing.

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This is not an indication that we can move away from affirmative action, however . . . this is a validation of the positive impact affirmative action is having on our society. Indeed, it has been these policies—especially those directed at minority participation in higher education—that are a major factor in our progress to date.

It would be tragic if we abandon a principle that has been so effective and dismantle a tool that has worked so well.

The achievement and economic gap between whites and persons of color may be closing, but it still exists. It is the direct result of centuries of state sanctioned racism, and if affirmative action is abandoned in 2003, the gap will never be closed.

Colleges and universities have an obligation—a moral obligation—to acknowledge and respond to the discrimination and prejudice that continues to plague our society. While the moral underpinnings of affirmative action are—in and of themselves—reason enough to support these efforts, the primary reason as far as I am concerned, let me also offer my second reason . . . the principle of enlightened self-interest. As we all know, our nation is rapidly becoming more racially and ethnically diverse. Our economic self-interest—survival, if you will—requires us to embrace policies to reach and educate a larger number of minority students. If we fail to do so, there will simply not be enough college educated, technologically skilled, culturally adaptable people to support our knowledge-based, global economy.

Within a few decades, we will become a nation of minorities. It is difficult to imagine a more compelling national interest than to insure that our colleges and universities reflect the diversity of our country.

That is why so many of the world's largest corporations—including General Motors, Microsoft, Bank One, and Pfizer—support the *Bakke* decision and the University of Michigan's admission policies.

These corporations know that "the future of American business, and, in some measure, the American economy itself, depends upon" the ability of universities to select student bodies that are racially and ethnically diverse.

My third reason why diversity is such a compelling interest comes from research that has documented something we have all known intuitively for some time.

Research conducted at the University of Michigan and elsewhere demonstrates that a diverse campus environment enriches the learning experience for all students—majority and minority.

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I want to note that the research at Michigan was actively encouraged and supported by one of our panelists, Nancy Cantor, during her tenure as Michigan's Provost. Much of the actual research was done by Patricia Gurin, a faculty member at Michigan.

What Professor Gurin and others empirically demonstrated is that by exposing students to diversity and multiple perspectives, all students learn more. It enables young people from different cultures and backgrounds to share experiences; challenge ideas; learn from one another; and grow as individuals in ways that simply could not happen if they remained within a more restricted cultural orbit.

Higher education represents perhaps our best hope for developing future generations of citizens that value tolerance, support inclusion, and practice mutual respect. But we can only realize this potential if we have tools—like affirmative action—to insure a diverse campus of qualified students.

I know that many of those who advocate for alternative – so-called percent plans -- agree that diversity on our campuses is important. They contend that by guaranteeing admission to state universities of the top, say 10 percent, of high school graduating classes, diversity can be achieved through “race neutral” means.

Now, quite frankly, I find there is something a little contradictory about embracing a “race neutral” policy with the stated intent of reaching a “race conscious” goal. Diversity is, after all, in large part about the inclusion of people of different races and cultures. If someone believes that diversity on college campuses is a good and positive force, both for universities and for society at large, why would they seek to abandon a policy that has been so effective in achieving that result?

Further, why would they, in its place, advocate a policy such as percent plans that do not achieve their stated goal AND have so many other drawbacks?

I noted earlier that I joined Harvard researcher Dr. Cathy Horn at a panel discussion with the Education Writers of America. Cathy's research team has conducted an extensive study on race-neutral the impact of alternative admissions policies as an alternative to affirmative action. She and her colleagues are among the nation's foremost experts on this topic.

One of the conclusions reached by the study was particularly telling. It stated that, “None of the alternative admissions models analyzed could replicate the composition of the student population that was in place before the termination of affirmative action.”

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In addition, I note that the negative impact on minority enrollment with these plans was greatest at the most selective schools. While Dr. Horn's research looked specifically at the ability—or inability—of percent plans to foster diversity, there are several other concerns about such programs.

Most troubling to me is the fact that these plans are predicated on continued de-facto segregation among high schools. Our goal should be to eradicate segregation from our school systems, not implement policies that – in effect – endorse segregation as an immutable reality.

Such plans also could encourage high school students to avoid difficult course work and competitive schools in order to maintain a high GPA and class rank. And, because of the one-dimensional admission standard of these percentage plans, they can place students in a competitive environment for which they are not adequately prepared.

Further, such plans have absolutely no impact on fostering diversity at private universities like MIT or in graduate and professional schools. This is a critical point that is often overlooked as this issue is discussed.

Think about it . . . if maintaining diversity and expanding opportunity through the outreach of affirmative action is abandoned, the decline in minority enrollment at our most selective undergraduate campuses will only be the first result we see.

This initial impact will have the domino effect of significantly constricting the pool of minority candidates for advanced degrees.

With fewer and fewer minorities afforded the opportunity to complete an undergraduate program, the number pursuing advanced degrees—not just in the fields of engineering and the sciences that are the focus of NACME and GEM—but also in Law, Economics, the Arts, and every other discipline, would be greatly diminished.

With this decline, the economic and social advancement that post-graduate education provides would be restricted to fewer and fewer minorities. It would be as if the circle of opportunity for minorities was getting smaller and smaller the further and further you went along the educational spectrum.

This is simply unacceptable. And it is unnecessary. The majority of Americans agree that achieving diversity on campus is important. There is no easy path to realizing this goal but there also is no doubt that we must continue our efforts.

The search for true equality of opportunity for all is a continuing journey and we most definitely have not reached our final destination. In the long run, this

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goal can only be reached by providing every child in America with a high quality K-12 education that affords him or her the chance to compete equitably for the best higher educational opportunities our nation has to offer. In that sense the goals at least of President Bush's "Leave No Child Behind" initiative are the right ones. We in higher education have an enormous opportunity and responsibility for insuring that these goals become a meaningful reality. This will require stronger partnerships with the K-12 sector than we have heretofore developed. But as I say, that's the long-term solution to realizing our goals for equity of opportunity.

For now and for the foreseeable future, the Supreme Court would be wise to not only uphold Michigan's policies, but also to acknowledge higher education's crucial role and responsibility for providing opportunities to more young people; for improving the educational experience of all of its students; and, thereby, for contributing to the economic prosperity and quality of life for all our nation's citizens. There really is no satisfactory alternative. Therefore, I hope *no* university will modify *any* of its diversity programs unless and until the courts say we must. Thank you very much.

Nancy Cantor has been Chancellor of the University of Illinois-Urbana/Champaign for almost two years, after distinguished stints as Provost and Executive Vice President, and before that, Dean at the University of Michigan and department chair at Princeton. A social psychologist, Chancellor Cantor is a member of the Institute of Medicine of the National Academy of Sciences and various national advisory boards.

Meeting her a few years ago at a Wiesner Science Policy Conference at Michigan, I was struck by her boundless energy and forthrightness. She also was constantly in the company of students. She spoke of the campus community in ways that reflect intimate understanding of what climate, diversity, and full participation all mean.

Nancy has probably been closer to the Michigan Supreme Court cases than anyone in this room. As Provost at Michigan, and therefore responsible for admissions policy, she spent (in her own words) "four very full years helping to compile the defense – working with our outside counsel, with faculty as expert witnesses, and with those writing amicus briefs. I also gave numerous speeches, nationally and on campus, in the state, and with the press to mobilize support. Probably my biggest impact was on the substance of the social science defense that we mounted."

**The Supreme Court, Access to Higher Education, and
Building an Integrated Engineering Workforce**

Nancy Cantor

Chancellor, University of Illinois at Urbana-Champaign

In *Brown v Board of Education*, the Supreme Court held that the nation has a compelling interest in ending segregation, and in *Regents of the University of California v Bakke*, it laid out the principles for acceptable affirmative action programs.

The Brown decision gave us the task of building a positive story of race in America; a story in which integration is the venue for building opportunity and access to the American dream. *Bakke* closed the Brown circle 14 years later by focusing on the government's compelling interest in achieving diversity in higher education and an integrated community of scholars.

In *Bakke*, Justice Powell wrote "it is not too much to say that the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." (*Bakke*, 438 U.S., Powell, IV, D)

The justices referred to this concern, that the nation's future is at stake, during oral arguments in the Michigan cases, asking lawyers for the plaintiffs whether such risks might justify some burden on individual rights.

Justice Breyer and Kirk Kolbo, lawyer for the plaintiff in *Gratz*, to address the argument that "the country will be much worse off. That's what we're being told. In fact, the country might not function well at all" without diversity. He continued: "All right, now, how can you say, or can you say, that isn't extraordinary? That it isn't a question of life or limb for the country?"

Kolbo replied, "There are important constitutional rights at stake. And those rights are the right to equal protection. A mere social benefit – that is, having more minorities in particular occupations or the schools – simply doesn't rise to the level of compelling interest."

Arrayed against the individual rights arguments of the plaintiffs are countless *amici* briefs. They insist that it is of vital national interest that institutions in higher education – public, private, and military academies alike – pursue both the tasks outlined in *Brown* and *Bakke*, namely, to use integration to ensure opportunity for all Americans and to use that opportunity to ensure integration in American society

Few "institutions" in American society, other than higher education and the military, can address these three urgent tasks:

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- Creating the social mobility that can close existing racial disparities in income, health, and employment
- Training a diverse group of leaders prepared to think critically and productively in a complex global world; and
- Paving the way for a tolerant, empathetic, cohesive multiracial democracy.

While we know we must generate a new story of race and race relations in America, unfortunately we are not as far along in rewriting that story as one might have imagined after Governor Otto Kerner of Illinois, speaking for the Kerner Commission concluded 35 years ago, “Our nation is moving toward two societies, one black, one white—separate and unequal. Discrimination and segregation have long permeated much of American life; they now threaten the future of every American.” (*Report of the National Advisory Commission on Civil Disorders*, Bantam Books, p. 1)

In fact, comparisons between the “state of the nation” with respect to race disparities and race relations in 1968 and now, when we marshaled data in support of affirmative action in the University of Michigan case, show that substantial racial disparities remain (and in some cases have worsened) in every arena of American life, from employment to health care to housing and education.

Although the number of black college teachers in the state of Michigan grew from 95 to 1,509 between 1960 and 1990, for example, and the number of black engineers grew from 201 to 2,658 (Sugrue, Thomas J., Expert Report of Thomas J. Sugrue, in *Gratz and Grutter*, Table 9). Studies have shown that black professionals still do not live in white neighborhoods anywhere in this nation. (*Ibid*, Section VIII)

And even when black and Hispanic men reach professional status, they earn only about two-thirds of what white men earn, according to a comprehensive review of recent literature by Joseph G. Altonji and Rebecca Blank. This gap holds true across the employment spectrum. (Blank, Rebecca and Altonji, J. "Gender and Race in the Labor Market," In *Handbook of Labor Economics*, Volume 3C. Edited by Orley C. Ashenfelter and David Card. New York, NY: Elsevier Science Press (1999), p. 3146, cited in *Amicus* brief filed by the AFL-CIO in *Grutter*.)

At the top of the corporate ladder, according to the Glass Ceiling Commission, 97 percent of senior managers at Fortune 1000 industrial and Fortune 500 service companies in 1995 were white. Among these firms, 0.5 percent were Black and 0.4 percent, Hispanic. (*Ibid*., p. 9, cited in *Amicus* brief filed by AFL-CIO in *Grutter* and *Gratz*.)

Controlled studies by the Urban Institute in the 1990s, using matched pairs of applicants for entry-level positions, showed that African American and Hispanic job applicants with the same qualifications as white applicants were three times as likely to be turned down. (William A. Darity Jr., and Patrick L. Mason, Evidence on Discrimination in Employment: Codes of Color, Codes of Gender, *Journal of Economic Perspectives* 63 (1998), p. 78-79.)

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Nationally, African Americans and Hispanics make up only 11 percent of those receiving B.S. degrees in engineering (American Society for Electrical Engineering) At the College of Engineering on our campus, only 8.2 percent of freshmen are African Americans or Hispanic, and they comprise only 6.4 percent of our engineering graduates.

Clearly, we have not done enough to change the face (or color) of success in America, nor have we moved as far towards integration as Justice Powell hoped.

In fact, in the oral arguments in *Gratz* and *Grutter*, both Justice O'Connor and Justice Scalia asked questions about when we would no longer need affirmative action. While the Michigan lawyers were quick to point out that it would come to an end at some point, they also argued forcefully that such a point was not yet here:

In 1978, when *Bakke* was decided, John Payton, a lawyer for the university told the justices, "I think all of us would be quite surprised... to realize that today in Michigan students live in such segregated circumstances growing up, it's really quite unbelievable. We could not have foreseen that. I think people thought that we were coming together in a way, and that hasn't occurred."

Indeed, Cornell West's words from *Race Matters* are still relevant today: "We simply cannot enter the twenty-first century at each other's throats... we either hang together by combating these forces that divide and degrade us or we hang separately." (West, *Race Matters*, Vintage, 1994)

The Critical Role of Higher Education

It is clear that our nation is becoming ever more multiracial. Two years after *Bakke* was decided, the 1980 census showed that African-Americans, Native Americans, Asian Americans, and Hispanics constituted 20 percent of the nation's population. Today, the minority student enrollment in U.S. public schools is approaching 40%. (Civil Rights Project, p. 1) What is not clear is how or if we will hang together.

"Race is not rocket science," Christopher Edley Jr. wrote in his foreword to the first volume of *America Becoming: Racial Trends and their Consequences*. "It is harder than rocket science. Race demands an intellectual investment equal to the task. It also demands relentlessness in research and teaching that will overwhelm the human tendency to let our differences trigger the worst of our natures." (*Racial Trends and Their Consequences*, Vol. 1., ed., Neil J. Smelser, William Julius Wilson and Faith Mitchell, National Research Council, Washington, D.C., 2001, p. ix)

As a social psychologist, I know that integration takes hard work, especially when we have little other than collective fear and stereotypes on which to build. We have to get to know each other if we are to profit individually and collectively from our diverse talents.

Sadly, as things stand today, we are not likely to get acquainted with people of other races in our primary or secondary schools, in our churches, mosques, and synagogues, or at our birthday parties and funerals. We can only get to know each other in the places we

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meet and genuinely interact as peers, and, for now, this frequently happens first on college campuses and in military boot camps.

Universities are safe havens for inter-group dialogue, the civil airing of conflict among students who, as peers, perceive each other as equals. No one thinks this happens easily or automatically, but it does happen, and even one or two such experiences can set a course for life. (Pettigrew, Thomas & Tropp, Linda, Does Inter-group Contact Reduce Prejudice? Recent Meta-analytic Findings, in Reducing Prejudice and Discrimination, Oskamp, ed., 2000, cited in *amicus* brief filed on behalf of the American Sociological Association in Grutter; Stephan, W. G. & Stephan, C. G., *Intergroup Dialogues, Improving Intergroup Relations*, 2001, Sage Publications)

As those writing in an *amicus* brief on behalf of the AFL-CIO suggested, and I quote: “higher education represents a unique opportunity and, from the vantage point of the workplace, the last opportunity, to foster interaction between diverse individuals.” (*amicus* brief filed by the AFL-CIO in *Grutter and Gratz*, p.17)

The Changing Nature of Work

Another *amicus* brief in the Michigan affirmative action case, filed by 65 leading American businesses, ranging from Microsoft to PepsiCo. Inc, and from General Mills to Xerox, also recognized this critical role of higher education in preparing for the changing nature of work. (Brief for *Amici Curiae* 65 Leading American Businesses in *Grutter and Gratz*, Feb 18, 2003, p. 1)

These businesses argued that diversity in higher education is “a compelling government interest not only because of its positive effects on the educational environment itself, but also because of the crucial role diversity in higher education plays in preparing students to be the leaders this country needs in business, law, and all other pursuits that affect the public interest.” (Ibid., p. 2)

These businesses, most of which are international companies, contend that individuals educated in a diverse setting are more likely to succeed. They can understand different perspectives, so they can solve problems creatively. A racially diverse group of managers with cross-cultural experience is better able to work with others in the U.S. and around the world, and is more likely to contribute to a positive work environment by decreasing incidents of discrimination and stereotyping. (Ibid., p. 7)

Corporate America is depending on higher education to shape an effective multiracial, multilingual, globally connected workforce. So are many, many other employers. Therefore, whatever happens to affirmative action, we must ask how we will continue to comply with our mandate to build for the future.

Building for the Future

The *Arizona Republic* recently editorialized, and I quote: “We believe that there is a compelling educational interest in ensuring diversity and that using race as one factor, not the only factor, not the single most important factor, is a legally acceptable and socially

responsible action in a country less than 40 years removed from polls taxes and literacy tests.” I am optimistic that the Supreme Court will agree.

However, if the Court were to rule against Michigan, either reversing or questioning *Bakke*, we should not turn to proxy systems. Instead, we should take lessons from the essence of both *Brown* and *Bakke*.

In both decisions, intelligence and excellence are seen from a fundamentally social perspective-- namely, that education and achievement are socially shared activities that depend in large part on the quality and effectiveness of the mix of people and ideas in the environment.

Therefore, whatever systems of admissions and recruitment we design, we must take very seriously the mix of people and ideas we bring to the table.

Powell’s plus-factor approach does just this careful composition and ensures individual qualification and success. The percentage solutions do not.

- We want a far more nuanced view of diversity; beyond black and white; beyond socioeconomic disadvantage; beyond disadvantage itself;
- We should take seriously the notion of critical mass and “within group variance” as a way to break down stereotypes and ignorance

Writing a Positive Story of Race and of Difference

When we move beyond black and white and beyond disadvantage to compose classes with students of many colors from many walks of life, we will prepare ourselves to write a positive story of race and of difference.

Perhaps because we have used race as a weapon of discrimination for so long, we have a hard time being straightforward in assigning it positive value in college admissions. Without question, there are good legal cautions in the equal protection clause against the direct consideration of race.

Justice Breyer, for example, asked Mr. Kolbo to explain the difference between a white applicant rejected because of race and a white applicant rejected because she is neither an athlete nor the child of an alumnus. Mr. Kolbo replied: “The difference is the Equal Protection Clause, your Honor. It does not apply to alumni preferences in scholarships. It applies to race.”

Justice Breyer then asked Kolbo whether, under the Equal Protection Clause, there was a difference between a system that tells someone who is discriminated against “the law does not respect you” and the system that says “the law does respect you, but we are trying to help some others.” “Suppose I thought that is a sound legal distinction as reflected in this Court’s cases. You would reply that--?”

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Kolbo responded: “‘Sound and reasonable,’ Your Honor, is not enough when it comes to race. It must be a compelling purpose. And that is the difference.” He went on to say, “There is something special about race in this country. It’s why we have a Constitution about it. It’s why we have a constitutional amendment.”

But that is also why Justice Powell expressly wrote his opinion in *Bakke* with full adherence to a “strict scrutiny” test of compelling interest and narrow tailoring to minimize the burden on majority applicants.

As the Michigan lawyers argued, the burden on the white applicants is relatively small, relative to the gains for society of a successful affirmative action program. Under a race-blind system, Ms. Mahoney said, not more than 80 of the 2,500 law school applicants rejected each year would have received an offer of admission.

“That is a very small and diffuse burden,” she said. “It’s not one to be minimized,” she argued, but “the legitimate interests that are being served are sufficiently compelling to allow this kind of limited consideration of race.”

It is time for educators to lay our values out directly, to rewrite the American imagination about race. One way to begin is to send a powerful message in college and university admissions that we value the contributions of students of color and we are therefore willing to use scarce resources (seats in a class) because we want them at the table.

Richard Florida, the Heinz Professor of Regional Economic Development at Carnegie Mellon University and author of *The Rise of the Creative Class*, has studied the correlation between tech-based business growth and the gay populations one finds in places that are booming—San Francisco, Miami, Seattle, Atlanta, San Diego. He concluded: “When people from varied backgrounds, places, and attitudes can collide, economic home runs are likely.” He said his research shows that “simply having an attitude of inclusiveness and open-mindedness seems conducive to creativity.” (*USA Today*, May 1, 2003, p. 13A) I believe that this is true for race as well as sexual orientation.

An atmosphere of inclusiveness is created when we build diversity into the mainstream of our institutions and workplace, asking diverse groups to work on the most challenging and important problems we are confronting, and including a diverse faculty and student body in our most challenging and exciting programs.

Diversity cannot be kept at the margins. The full organization, from the leaders to the stakeholders, must see its value and centrality to their mission and must be willing to change culture and norms of behavior. So how can we make these changes?

Minority access to graduate school and to the faculty, as well as to our undergraduate ranks, remains extremely important, and the numbers show we are not yet there. According to the American Society for Engineering Education, only 2 percent of tenured

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and tenure-track faculty nationwide are African American, and only 3 percent are Hispanic. But this is about more than numbers.

We need to create learning environments that are welcoming and non-threatening, where faculty help students not to make assumptions—based only on skin color or ethnic group—about the likelihood that other members of their study group will succeed or fail.

As Danielle Ossler, an African-American graduate from our electrical engineering program told me, “Coming from the perspective of a woman and a minority, a million complex things are happening in the classroom. I’m not just thinking about the equation written on the board. I’m thinking about how I am going to be perceived.” The first question Danielle’s lab partner asked her was “Why are you here?” Others just assumed she couldn’t do the work.

Her experiences with other honors students who realized she was a very good student were not much better. “If you present yourself as an intelligent African American,” she said, white people say “We’ve never heard you talk that ignorant talk. Why do all the other people talk that way?”

Asian American students, on the other hand, feel the pressure of being unfairly branded the “model minority.” Jocelyn Yen, a senior in economics, calls this assumption a “plague.” “There’s this assumption that, when it comes to issues of race, Asian Americans don’t care because they do well. It has bothered me when I see friends struggle with classes and feel uncomfortable asking for help because they feel they’re expected to understand everything.”

Our students say that professors can play a crucial role in helping students to understand diversity, discard stereotypes, and understand the world. Too often, the university is the first place students of all colors have encountered each other as equals, and it is certainly the best place to make real integration happen before students enter the world of work. If we design them to do this, universities can play a crucial role in helping to build a more tolerant, empathetic, multiracial democracy.

We must build environments suffused with perceptions of our common fate and our shared tasks and aspirations. We must keep working on a positive story of race in America.

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Postscript

We need to be mindful, and vigilant about the groups at the forefront of the anti-affirmative action movement:

- *the Center for Individual Rights (Washington-based, representing most of the plaintiffs in court battles against college admissions policies, and led by Terence Pell);*
- *the American Civil Rights Institute (Sacramento-based, Ward Connerly-led),*
- *the Center for Equal Opportunity (Sterling, VA-based, Roger Clegg is general counsel); and*
- *the National Association of Scholars, has advocated opposition to race-conscious policies on campuses.*

In a just-published book titled The Assault on Diversity: an Organized Challenge to Racial and Gender Justice (Rowan and Littlefield, 2003), author Lee Cokorinos states that these organizations “are on a mission” and their goal is “essentially trying to eliminate the gains of the civil rights movement.”

Finally, as legal scholar Ronald Dworkin writes in “The Court and the University,” (The New York Review of Books, May 2003):

“Our colleges and universities have, on the whole, served the country brilliantly . . . They are committed to academic excellence and the common good, and they have, as institutions, no political goals that compete with these aims. They each decide on admissions strategies for themselves, they pose no strategies on other institutions, and they are supervised by courts alert to the slightest evidence of improper motives. It would be foolish not to allow them to do what they think urgent for their students and their country.”
