
# College Board Seminars on the Implications of the U.S. Supreme Court Decisions in the University of Michigan Admissions Cases

**SUMMARY OF THE PROCEEDINGS**
**SUMMER 2003**

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# THE COLLEGE BOARD: EXPANDING COLLEGE OPPORTUNITY

The College Board is a national nonprofit membership association whose mission is to prepare, inspire, and connect students to college success and opportunity. Founded in 1900, the association is composed of more than 4,300 schools, colleges, universities, and other educational organizations. Each year, the College Board serves over three million students and their parents, 23,000 high schools, and 3,500 colleges through major programs and services in college admissions, guidance, assessment, financial aid, enrollment, and teaching and learning. Among its best-known programs are the SAT®, the PSAT/NMSQT®, and the Advanced Placement Program® (AP®). The College Board is committed to the principles of excellence and equity, and that commitment is embodied in all of its programs, services, activities, and concerns.

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This report reflects the opinions of panelists and others who attended meetings during the summer of 2003 and are not necessarily those of the College Board. You can download this publication at: www.collegeboard.com/diversity.

# FOREWORD

This document is testimony to the importance that College Board members place on promoting access to higher education and achieving diversity on their campuses in as many ways as possible. It provides a record of a series of conferences and seminars conducted immediately following the Supreme Court's decisions about the use of race in the University of Michigan's admissions programs. These meetings provided a forum for College Board members to learn about and discuss the implications of the decisions and to share information about different approaches to developing and implementing legally sound institutional policies and practices that support their diversity goals.

Many individuals contributed to these meetings, but special recognition and thanks are due to the six College Board members who ably chaired these meetings: John Barnhill (Florida State University), Andre Bell (Bentley College), Madeleine Eagon (DePauw University), Nancy McDuff (University of Georgia), George Mills (University of Puget Sound), and Bruce Walker (University of Texas at Austin). I would also like to acknowledge the efforts of Mary Carroll Scott, Vice President of Membership and Kris Zavoli, Director of Regional Initiatives, who worked with other College Board staff in the membership office and in regional offices to handle the myriad logistical details on an extremely tight schedule. All of these meetings were coordinated by Gretchen W. Rigol, retired College Board Vice President, who attended each meeting and prepared this summary of the proceedings.

The College Board was one of many institutions that filed *amicus curiae* briefs with the Supreme Court last winter, and we are pleased that the Court upheld the important principle that the educational benefits that flow from a diverse student body are a compelling governmental interest. The College Board's mission to prepare, inspire, and connect students to college success and opportunity is driven by a commitment to excellence and equity. The Supreme Court decisions reaffirm the importance of those goals to college admissions decisions across the nation and the need to increase access to educational opportunity for all students.

*Fred Dietrich*
*Senior Vice President*
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# I. INTRODUCTION

One of the College Board's functions is to provide a forum for members to discuss current issues and to exchange ideas about different approaches to admissions, financial aid, and other topics related to access to higher education. When the U.S. Supreme Court issued its ruling on June 23, 2003, in the University of Michigan admissions cases, it became clear that the complex decisions would have implications for most other colleges and universities across the nation. In response, the College Board initiated several activities designed to assist the College Board's higher education members understand the Court's decisions and what it might mean for their own institutions.

In late June, the College Board launched a special section on collegeboard.com (www.collegeboard.com/diversity) with background information about the cases and different approaches that institutions use to achieve diversity on their campuses. Soon thereafter (July 10–11), a national invitational conference was convened in Chicago to explore the ramifications of the decisions and to formulate plans for further discussions. Based on the recommendations from the Chicago meeting, a series of five regional seminars were conducted during August 2003. More than 300 individuals from 150 institutions attended these meetings.

The agendas for each of these meetings were similar: they began with a panel of legal experts, followed by discussions of more specific topics related to institutional practice and concluded with a broader discussion of the political, public relations, and other implications of the decisions. Each topic was addressed by several panelists and then opened for discussion among all participants. A copy of the agenda followed at all of the August seminars, and a listing of panelists are provided in Appendices A and B.

As background for these meetings, two legal summaries were prepared and circulated to all participants:

> *The Supreme Court Decisions in Grutter v. Bollinger and Gratz v. Bollinger prepared for the College Board* by Hogan and Hartson L.L.P.
>
> *Case Analysis and Lessons Learned Regarding the Use of Race by Colleges and Universities* by Art Coleman and Scott Palmer, Nixon Peabody L.L.P.

Both of these papers are reproduced in the appendices and also can be downloaded from the section on Background and Legal Context on www.collegeboard.com/diversity.

In addition, the College Board commissioned an update of *Diversity in Higher Education: A Strategic Planning and Policy Manual*. A working draft of several chapters was distributed to participants at the August seminars. The final version is expected to be available before the end of 2003.

# II. LEGAL IMPLICATIONS

The following commentary is excerpted from remarks made by the 14 attorneys who participated in one or more of the July or August 2003 meetings. Included among the group were campus attorneys, law school professors, a college president, a provost, and attorneys in private practice specializing in education law. Although there was not always consensus on all interpretations, there was general agreement on the major elements of the Supreme Court's decisions and some of the key action steps that institutions should appropriately follow. Each legal panel emphasized that there were often no clear-cut interpretations of "legal" or "unconstitutional" and that institutions need to evaluate their own policies and practices in the context of their specific mission and goals. And while having a good lawyer helps, the ultimate test of the appropriateness and legality of a practice will rest on the soundness of the educational reasons and supporting evidence that an institution has for a particular practice.

The most significant outcome of the Supreme Court's decisions was its affirmation of the principle that the educational benefits of diversity may constitute a compelling state interest and that admissions practices may take race into account under certain conditions. This position was clearly articulated in the majority opinion delivered by Justice O'Connor and in Justice Kennedy's dissenting opinion. Thus, the key ruling issued 25 years ago by Justice Powell in the *Bakke* decision was upheld by six justices on the current Court.

Panelists emphasized, however, that the University of Michigan prevailed because it had substantial research supporting the educational benefits of diversity to its institutional mission and was supported by numerous *amici* (particularly corporations and the military). Other institutions that pursue the educational benefits of diversity should assure that their policies are rooted in their clearly articulated mission and goals and supported by institutional-specific research. It is not enough to pursue diversity for diversity's sake, nor can diversity be justified by vague or theoretical rhetoric.

Another consequential aspect of the ruling relates to how race may be used in admissions. The University of Michigan Law School's approach of individualized review was upheld, while the specific point system used by the undergraduate program was ruled unconstitutional. The key differences outlined by the Court were flexibility and the review of each applicant as an individual (as the Law School did) versus a mechanical or automatic system that results in race becoming a predominant factor in the decision.

> *When using race as a "plus" factor in university admissions, a university's admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application. The importance of this individualized consideration in the context of a race-conscious admissions program is paramount.*[1]

[1] O'Connor, pages 24–25, *Grutter vs. Bollinger et al.*, No. 02-241, 539 U.S.__ (June 23, 2003).

Furthermore, the Court approved of the Law School's approach because it

> *actually gives substantial weight to diversity factors besides race. The Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applications) who are rejected.… This shows that the Law School seriously weighs many other diversity factors besides race that can make a real and dispositive difference for nonminority applicants as well.*[2]

A frequent question raised by participants related to the common practice of dividing the applicant pool into groups by a rough academic index (generally grades, class rank, and/or test scores), with the top group generally admitted and the bottom group generally denied admission. While the legal panels noted that the use of points or indices was not specifically prohibited, the use of a mechanical system for decisions would probably not be appropriate in a race-conscious admissions practice. However, if there were minimum qualifications all students must meet (presumably based in research or another justifiable basis), that would probably be acceptable, provided that those criteria were applied uniformly to all applicants. (As one panelist noted, an institution can't draw the line but then occasionally go "cherry picking" within the bottom group.)

Another possible danger of differential review by academic groupings of students is that there might be disproportionate numbers of underrepresented minority students in the lower academic groupings, resulting in pools that might be de facto defined by racial classifications. If the percentage of minority applicants accepted in the lower groupings is considerably higher than the percentage of nonminority students admitted, this practice might be challenged from the perspective that race was a defining factor in the decision.

A related set of comments from participants, particularly those with large numbers of applicants, concerned the cost of individualized review for all applications. Members of the legal panel noted that "administrative convenience" was not a justification for not providing individualized review for all applicants if race is to be considered.

> *[T]he fact that the implementation of a program capable of providing individualized consideration might present administrative challenges does not render constitutional an otherwise problematic system.*[3]

The legal panels clarified, however, that if an institution did not consider race or national origin (or gender) in its admissions process, it was free to utilize any rational or reasonable system it deemed appropriate, including automatic selection based on points or another mechanical approach. It was also noted that the Supreme Court decisions outline the conditions under which race might be utilized in making admissions decisions, but that institutions, states, or other bodies are still free to decide whether or not race may be a factor. Thus, the decisions have no impact on state laws in California and Washington and the executive order in Florida, which prohibit race-conscious

[2] O'Connor, page 26–27, *Grutter vs. Bollinger et al.*, No. 02-241, 539 U.S.__ (June 23, 2003).
[3] Rehnquist, page 26–27, *Gratz et al. vs. Bollinger et al.*, No. 02-516, 539 U.S.__ (June 23, 2003).

admission. The Supreme Court decisions do, however, overturn the Fifth Circuit ruling in the *Hopwood* case, so that institutions in Texas, Louisiana, and Mississippi are now free to adopt diversity-based, race-conscious admissions policies if they choose to.

Quotas have been clearly unconstitutional since the *Bakke* decision. Thus, the University of Michigan Law School utilized the concept of "critical mass" to support its consideration of race in making admissions decisions. "Critical mass" is not used as a numerical concept, but rather as an educational one deriving from the need to have various points of view along many dimensions in the classroom—not a single voice supposedly representing stereotypical views of a particular racial or ethnic group. One of the educational benefits of diversity for all students is having a "critical mass" of students from different groups so that there are different views represented within the group.

The decisions in the University of Michigan cases speak directly to the use of race in selection for admission, but do not directly address outreach, recruiting, financial aid and scholarships, retention programs, or other special activities that an institution might employ to support its diversity goals. The legal panel discussed the possible implications of the decision in these other areas.

To the extent that outreach and recruiting practices are designed to expand the pool of potential applicants and do not confer material educational benefits on students from a particular racial or ethnic group to the exclusion of students from other groups, such practices are probably justifiable. (An example given was race-exclusive recruitment through programs such as the Student Search Service® intended to inform students about a particular institution.) However, activities that provide material benefits that are race-exclusive (such as expense-paid trips to the campus and summer programs) should be examined in light of the specific purposes of the program. In many cases, such programs might be equally effective (and more defensible) if participants are chosen on socioeconomic or geographic grounds or by consideration of multiple factors. Some—but not all—members of the panel expressed the opinion that race-exclusive programs were probably unconstitutional, but that race could be considered as one of many factors, provided the program met the requirements of narrow tailoring.

The current guidelines for considering race in the allocation of financial aid and scholarships are set forth in the policy guidance on Title VI issued by the Department of Education in 1994.[4] These guidelines note "important differences" between admissions and financial aid (based on the rationale that an admissions decision is of greater consequence than a financial aid decision). In addition, institutions might have different pools of funding available for students from different backgrounds. The key consideration is whether, in aggregate, students of all races can benefit equally from the entire pool. Nonetheless, several members of the panel noted the potential vulnerability of race-exclusive scholarships and automatic preferential packaging for certain racial or ethnic groups. In addition, it was noted that the current Department of Education might reinterpret the 1994 policy guidance or even issue revised guidance.

[4] United States Department of Education Race-Targeted Scholarship Policy, 59 Federal Register 8756 (February 23, 1994).

The legal panels offered suggestions on what institutions, particularly those that practice race-conscious admissions, should do to assure that their policies and practices were consistent with the Supreme Court decisions in the University of Michigan cases.

- *Involve legal counsel as you develop, review, and/or revise policies and practices.*
- *Be sure that your practices are firmly rooted in your institutional mission.*
- *Develop or revise admissions policy statements to assure that they accurately reflect actual practices. (This process should involve freshman and transfer undergraduate programs, as well as any graduate programs.)*
- *Examine and articulate the multifaceted aspects of diversity (racial/ethnic, first-generation, socioeconomic, etc.) your institution values.*
- *Keep longitudinal statistics about your applicant pool and review this data critically.*
- *Conduct ongoing research on the educational benefits of diversity.*
- *Review your admissions policies and practices annually.*
- *Consider race-neutral approaches.*
- *Review your application to assure that all students are provided an opportunity to demonstrate their unique qualifications and how they might contribute to diversity.*
- *Develop an inventory of, and examine all, campus activities that might utilize race-conscious policies (admissions, financial aid, academic support services, housing, student activities, etc.).*
- *Pay attention to the campus climate and work to assure that the educational benefits of diversity are being realized throughout the institution.*

Finally, the legal panels noted that the Court's decisions contemplated an end to race-conscious practices. All race-conscious admissions programs must have a termination point. The limited consideration of race to further the educational benefits of diversity is permitted only so long as race-neutral approaches are not found to be effective. Notably (although subject to interpretation) the Court concluded its opinion by stating:

> *We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.*[5]

[5] O'Connor, page 31, *Grutter vs. Bollinger et al.*, No. 02-241, 539 U.S.__ (June 23, 2003).

Panels of admissions and financial aid directors and other senior administrators addressed this topic, followed by questions and comments from all participants. As background for this discussion, a pre-publication working draft of sections from the revised *Diversity in Higher Education* was distributed. Of particular relevance to this topic were the chapters The Process of Self-Assessment: An Outline of Critical Steps and The Defining Questions: A Framework for Programmatic Self-Assessment.[6]

A common theme emphasized during each seminar was the need for an institution-wide commitment to diversity goals, with solid grounding in the institution's mission, strategic plan, or other guiding principles. Achieving diversity is not simply the responsibility of the admissions department; everybody and everything associated with the institution needs to be engaged in the process. This includes its faculty and curriculum, advising and retention programs, financial aid and scholarships, student services, housing, the bursar's office, public affairs, campus security, the overall institutional budget, alumni, and so on. A successful diversity policy is not simply described by the characteristics of the freshman class or even the characteristics of the entire student body or graduates, but rather by the campus climate and how all students and faculty interact with one another.

Until recently, many institutions employed a somewhat piecemeal approach to diversity, with some departments developing isolated plans and activities, such as recruiting more minority students, encouraging more female engineers, or establishing stand-alone educational opportunity programs geared toward disadvantaged students. There was general agreement that an effective diversity program needs to be more coordinated and comprehensive, should involve the entire institution and should have solid support from the president, chancellor, and governing board.

Some institutions have established special diversity committees comprised of students, faculty, and administrators to review, revise, and/or develop a diversity policy that was submitted to the senior administration and board of trustees for final approval. At other institutions, the general policies emanated from the president or board of trustees, with campus committees charged with implementation. One public institution described a major diversity commission that includes representatives from the campus as well as alumni, representatives from local businesses, and others from the community it serves. Some institutions described ongoing activities, such as a standing president's council or an individual or office charged with the responsibility of assuring that diversity policies were implemented throughout the institution.

Regardless of the approach, it was agreed that there were several important elements of any diversity policy. The first was to develop a consensus on the meaning of diversity at a particular institution. It is essential to involve the entire campus in a

[6]The final version of *Diversity in Higher Education: A Strategic Planning and Policy Manual* by Arthur Coleman and Scott Palmer will be available by late 2003.

dialogue about what diversity means for the institution. In some cases, alumni and businesses that hire graduates have been included in these discussions. In most cases, diversity is conceived broadly, often including several of the following dimensions:

- *Socioeconomic*
  - *Income*
  - *First-generation to attend college*
  - *Parents in blue-collar jobs*
- *Racial/Ethnic*
- *Gender*
- *Geographic*
  - *In-state/Out-of-state*
  - *Underserved regions*
  - *Rural/Inner cities*
- *Schools sending few graduates to college*
- *Veterans*
- *Older students*
- *Religion*
- *Political views*

If specific racial and ethnic groups are identified as part of the institution's diversity priorities, it is important to have a clear rationale for why certain groups might be included and others not. Furthermore, broad groupings often mask important diversity elements. For example, students with Asian backgrounds might be well represented on campus, but those from certain geographical regions might be underrepresented.

A second important element of any diversity policy is that the policy must be clearly articulated and widely available to students, faculty, and staff, as well as to prospective students and their families, school counselors, and the general public. Excerpts from diversity statements from several of the institutions represented at the summer 2003 seminars are included in Appendix C. Most clearly link the importance of diversity to the overall educational mission of the institution and the effect the institution hopes to have on the future lives of its graduates.

Third, all programs and activities on campus need to be examined. What is the educational rationale for each program? Does each program relate to the overall diversity goals of the institution? Is the program being administered in ways that conform to the principles laid out in current law, including the recent Supreme Court decisions? If race is used, what role does the consideration of race play and is it necessary given the purposes of the program? Are material benefits being denied some students solely because of their race? Are there race-neutral approaches that would accomplish the same objectives? Are all programs being run in ways that accomplish what they were intended to do?

Finally, all programs and activities need to be regularly monitored and formally evaluated. Although good evaluation requires considerable resources (both time and money), it is important to empirically assess programs to make sure they are as effective and efficient as possible and to develop a research foundation to support campus activities. A director of admissions at an institution that had successfully responded to

several legal challenges noted that a good institutional research department was as important as a good lawyer.

Participants discussed the types of research and evaluation that might be conducted. On one level, it is simply keeping track of numbers—the composition of the population from which students can be recruited (such as high school enrollment data), the applicant pool, accepted and denied students, and enrollment at all levels. Specific activities should be evaluated from the perspective of the institution's overall mission and diversity objectives. If, for example, a yield activity is intended to enroll more students from the inner city, is it accomplishing this objective—and at what cost?

All institutions, particularly those that have any race-conscious programs, should develop a research agenda that demonstrates the educational benefits of diversity (if indeed that is one of their goals). Participants noted the extensive research that the University of Michigan had conducted over the years.[7] Other models for researching diversity topics are included in *The Shape of the River*.[8] It was suggested that questions on diversity be included on surveys taken of both incoming and senior students and that focus groups of enrolled students be utilized to monitor progress toward meeting diversity objectives. While there was general agreement that such research is essential, participants expressed a desire for more help and information on this issue.

Several panelists addressed the implications of the Supreme Court's decisions on financial aid and scholarships and the relationship between an institution's diversity goals and its financial aid programs. As noted previously, the Court did not directly address financial aid, but many of the principles outlined in the decisions would probably apply.

The financial aid profession has evolved over the years. While once seen primarily as a tool for individual student access, at most institutions financial aid policies embrace a broader set of goals, such as the following:

- *To assure a fair and equitable distribution of funds*
- *To eliminate financial barriers that would prohibit students from gaining higher education*
- *To support the institution's mission and goals, including its diversity goals*

As with all other institutional programs, financial aid and scholarship policies and practices need to be carefully examined, aligned with the institutional mission, and reviewed from a legal perspective. Several panelists noted that all aspects of an institution's awarding policies should be reviewed periodically. Many institutions utilize preferential packaging based on factors such as academics, minority status, and athletics. Do these factors parallel institutional priorities? Also, what methods are used to make decisions about which students receive different types of packages? These decisions should probably not be based on a mechanical process that, for example, automatically gives all minority students a particular package of aid and/or scholarships. If individualized decisions are made, have financial aid staff received the same level of training that admissions readers receive?

[7] The University of Michigan research on the educational benefits of diversity is available at their Web site: www.umich.edu/~urel/admissions.
[8] Bowen, William G. and Derek Bok. *The Shape of the River*. Princeton: Princeton University Press, 1998.

Although the U.S. Department of Education guidance expressly permits race-exclusive scholarships under certain conditions (i.e., they must satisfy strict scrutiny standards), panelists raised questions about these practices. For example, is it permissible for an institution to set aside a fixed amount of funds (even if these come from earmarked endowed scholarship funds) to award to minority students or would this be construed as a quota? To what extent may the institution cooperate with private organizations that operate race-exclusive programs? The best advice participating lawyers could offer was: "It depends." There are two key questions: What are the educational reasons for a particular practice? Can the same objectives be met through a race-conscious or race-neutral program?

Not surprisingly, there was a spirited discussion (with no resolution) about need-based versus merit-based financial aid and scholarships. Some maintained that institutions that practice need-based aid, particularly those that have sufficient funding to meet the full need of all accepted applicants, have the ideal race-neutral financial aid policy. Others noted that most underrepresented minority students had financial need so that by meeting full need, an institution's diversity goals would be supported. However, it was also noted that in some settings the poorest students were not necessarily minority students.

On the merit side of the argument, participants noted that much of the merit funding was created by state legislation and presumably reflects the will of the people. In addition, several institutions that practice race-neutral admission use special scholarships to attract and enroll minority students. While some panelists urged that institutions should not view merit aid as the way to achieve diversity, others asserted that "money talks" and that well-qualified minority students would receive attractive packages and scholarships from many different institutions.

Although most of the discussion about admission is summarized in section IV below, it was emphasized that all aspects of an institution's admissions program need to be subjected to regular review and evaluation, both in relation to the institution's mission and goals, and in light of the recent Supreme Court decisions. This evaluation should encompass all elements of admission—from outreach and recruitment, to selection policies, to post-admission (yield) activities.

The legal panels urged admissions officers to carefully evaluate the "nuts and bolts" of their admissions processes. It was suggested that some institutions, guided by administrative convenience, might have adopted questionable practices, such as utilizing different-color folders for minority applicants. Participants were urged to look for the following red flags when evaluating their admissions processes:

- *Separate consideration for different races, such as a special admissions committee or group of reviewers who specialize in reading minority applicants*
- *Different criteria for different groups, such as different basic score or grade expectations*
- *Gaps in scores and grades between racial/ethnic groups if different percentages of each group are admitted*
- *Admission of every minimally qualified minority applicant*
- *Individualized consideration for only some qualified applicants*
- *No year-to-year change in the percentage of minority students making up the incoming class*

One major topic at several seminars involved staffing and training. Is everyone who interacts with prospective students and families fully conversant with the institution's mission and goals, admissions policies, and position on diversity? This applies to all admissions staff, even the newest admissions counselors, as well as tour guides, alumni recruiters and interviewers, and faculty who assist with admissions. Are all comfortable responding to questions such as: *Does the institution use affirmative action? Does the institution give preferential treatment to minorities? Is it fair that a student with all A's might be denied admission while a student with B's is admitted? What about preferential treatment for alumni children?* And more important, would all who represent the institution provide the same response to these questions?

Another set of questions related to the various concepts of "merit." The plaintiffs in the Michigan cases (and many others) tend to define merit in terms of grades, class rank, and test scores. Although these factors might delineate basic eligibility requirements at some institutions, most institutions value and consider many other attributes in the students they select, including what diverse qualities the student embodies. As noted earlier, there can be a multitude of diversity factors that an institution seeks. It is important to infuse the institution's particular definition of diversity into all admissions messages—in catalogues, viewbooks, Web sites, etc. Particular attention should be paid to the application to assure that there are questions that enable students to reveal their individual characteristics, talents, interests, etc.

One admissions director exhorted her colleagues to approach the evaluation process with both pragmatism and idealism. The reality is that admission is essentially about sorting and selecting, and there is considerable competition among colleges and universities for the "best" students, however that might be defined. At the same time, admissions professionals might be viewed as the venture capitalists of education, entrusted with investing in students to build a bigger middle class to benefit the nation and generations to come.

# IV. LESSONS LEARNED: DIFFERENT APPROACHES TO ACHIEVING DIVERSITY, INCLUDING RACE-NEUTRAL APPROACHES

Experienced admissions officers (including representatives from institutions that practice race-blind, race-neutral, and race-conscious admission) from around the country introduced this topic at each seminar. Following each panel presentation, all participants joined in the discussion. The College Board's Admissions Models monographs[9] provided general background.

An underlying theme throughout these discussions was that institutions value diversity and even those that have been required, in recent years, to abandon race-conscious selection policies have worked hard and creatively to try to maintain or increase diversity on their campuses. But there was also an acknowledgement that in some ways the admissions profession had become complacent after the *Bakke* decision, assuming that race-conscious selection policies were firmly entrenched. Many of the initial reactions from colleges and universities to the Court's ruling in the Michigan cases reflected comfort with the decisions and that nothing would need to change at their institutions. But upon a careful reading of the decisions (including the dissenting opinions), most admissions professionals have come to realize that institutions were given a wake-up call on June 23, 2003.

One admissions dean expressed optimism that the Court's ruling would provide the impetus for positive change. After two decades of competing with each other for the same limited number of top students, this is an opportune time to work together to increase the number of well-prepared students, particularly those from underserved backgrounds. Others noted the extremely small number of minority students with high grades and test scores and how there simply weren't enough top students to reach "critical mass" at all the institutions that are seeking diversity. Several participants expressed concern that the current recruiting environment is set up as a zero-sum game, and that increased recruitment of minority students is simply moving a finite number of qualified students between institutions. In addition, institutions with limited resources or restrictions on race-based financial aid and scholarship programs stand to lose out to the more affluent and flexible institutions.

Given the challenge set forth by the Court that race-conscious admissions policies would no longer be necessary in 25 years, higher education needs to work closely with the K–12 sector to improve the preparation of all students. The No Child Left Behind Act is an important step in this direction, but it may not be enough. Colleges and universities train teachers, principals and others who will be educating the next generation of students. Participants urged that there be more interaction between colleges of education and local schools, and that education programs become central components of an institution's overall diversity program.

[9] *Admissions Decision-Making Models: How U.S. Institutions of Higher Education Select Undergraduate Students* by Gretchen W. Rigol (College Board 2003); *Best Practices in Admissions Decisions* (College Board 2002), and *Toward a Taxonomy of the Admissions Decision-Making Process* by Greg Perfetto (College Board, 1999) are all posted on www.collegeboard.com/diversity or can be purchased by calling 800 323-7155.

There was considerable discussion of the importance of pipeline programs—activities that both enrich educational opportunities for traditionally underprepared students and address embedded attitudes about attending college. Many institutions have developed partnerships with schools. Some are with local schools, with faculty and administrators working collaboratively with school personnel in the classroom. Others assist with curriculum development and evaluation. One college in a rural setting has adopted several schools in major cities. Faculty make monthly trips to these schools to work with their counterparts. Another pipeline approach used primarily by public institutions is to target schools that have traditionally sent few applicants to the institution. At least one institution provides scholarships to all qualified applicants from these targeted schools. However, it was noted that the effectiveness of some pipeline programs that begin in high school was questionable and that efforts should begin during elementary and middle school years.

Several legal concerns were raised about the specific details of these programs. For example, is it acceptable to identify targeted schools because of large minority populations? One institution runs a special summer program that enrolls a high percentage of minority students, and all students who complete the program are processed through a special admissions track. Many institutions operate state-funded educational opportunity programs (often for predominantly minority students) that run independent admissions processes. Are these dual admissions processes permissible? In order to answer these questions, attorneys suggested that the institution needed to clearly articulate the educational rationales for these specific situations and whether these particular approaches were necessary to meet the objectives of the programs.

Similar questions were asked about targeted recruitment activities. As noted in the section Legal Implications, attorneys generally thought that activities intended to broaden the pool of potential applicants were acceptable, but that questions should be asked about whether the particular activity was providing a material benefit to students of some races or ethnic background and not others.

Although the terminology in the Supreme Court's opinions refers to race-neutral alternatives, it was noted that most institutions (unless restricted by state laws, executive orders, or other restrictions) do not need to view race-conscious and race-neutral/race-blind activities as an either-or proposition. Many of the approaches utilized in a race-neutral setting are equally valid as a part of a race-conscious admissions policy. In addition, many of the recent trends in admissions, such as whole-folder, holistic, comprehensive, individualized review, are being employed by all types of institutions—large and small, public and private, and those with race-blind, race-neutral, and race-conscious policies. Nonetheless, the Court clearly impels institutions to engage in "serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks."[10]

Institutions that have had to adopt race-blind or race-neutral admissions policies described the different approaches they have employed to attract and enroll a diverse

[10] O'Connor, page 27, *Grutter vs. Bollinger et al.*, No. 02-241, 539 U.S.__ (June 23, 2003).

student body. A director of admissions at one such institution noted that it could be done, but it is not easy and it requires considerable resources and commitment. This institution increased its recruitment budget by more than $1 million and transformed the function of the admission office from processing applications to active recruiting. They developed systems to track prospects, produced more brochures, and established regional recruiting centers in areas with high-minority concentrations. In order for race-blind policies to work, there must be an institutional commitment, supported by the president, and everybody on campus needs to work together toward the institution's diversity objectives. It's a never-ending process that requires constant attention and sustained effort by the entire campus community.

Percent plans (such as those in California, Texas, and Florida that guarantee admission to students in the top 4 percent, 10 percent, or 20 percent of their high school graduating classes, respectively) have been cited by some as effective race-neutral alternatives. Representatives from these states provided somewhat different perspectives about their experience with these plans. In some cases, they have helped race-neutral institutions maintain some level of diversity, although not always at the same levels as with race-conscious admissions policies.[11] One director noted that percent plans were not effective for selective universities. Most reported that these plans had increased the number of schools from which applicants came and that they were serving a larger segment of the state. However, concern was raised that at the University of Texas, for example, a growing proportion of the class were being admitted through the class rank plan, leaving little room for students with other desired characteristics.

Representatives from private colleges noted that class rank programs were not practical since many schools do not provide class rank information. Others noted that class rank plans would not contribute to diversity unless the applicant pool came from areas where schools were not well integrated. In many parts of the country, there are no large concentrations of under-represented minorities. It was also pointed out that Justice O'Connor stated that "…even assuming such plans are race-neutral, they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university."[12]

Several panelists from institutions that practice race-blind or race-neutral admissions focused on revisions they had made to the selection process. Many have migrated during the past several years from somewhat mechanical approaches (such as a combination of grades and test scores) to more individualized and comprehensive review that looks at applicants more broadly. For example, at the University of California, the faculty has identified 14 criteria (10 of which are academic) that form the basis of admissions decisions. In order to individually review every eligible application, external readers (including counselors and other educators) have been hired and elaborately trained and monitored throughout the reading process to assure consistency. It was noted

[11] See, for example, the University of Texas' Web site on admissions research: http://www.utexas.edu/student/research/reports/admissions/ResearchHome.htm.

[12] O'Connor, page 28, *Grutter vs. Bollinger et al.*, No. 02-241, 539 U.S.__ (June 23, 2003).

that comprehensive review is an extremely expensive process. Another important lesson learned at the University of California is that the public needs and wants information about the selection process. Consequently, considerable efforts have been made to clearly articulate the criteria that are considered, and to demystify the process as much as possible.[13] The public needs to understand that there is no cut-and-dried definition of who will be admitted and who will not.

Many institutions have modified their application forms to elicit more information about a student's socioeconomic background. Participants discussed different ways to gather information about students' socioeconomic status. Information about parents' employment and education were cited as useful. Some institutions ask direct questions about family income, although some participants questioned the appropriateness of asking this question and whether or not the information received would be accurate.

Another relatively new set of questions on some applications is designed to permit students to describe how they would contribute to the institution's goals for diversity and cultural inclusiveness. These are generally open-ended questions or optional or required essays. (One institution noted that an unintended consequence of adding an essay was a reduction in the number of underrepresented minority applicants, but others had not observed a similar drop.) The important aspect of these questions is to gain information about all elements of diversity that the institution values. But it was acknowledged that the addition of an essay or open-ended questions generally requires additional staff to process and read this additional material.

In recent years, more attention has been paid to evaluating students in the context of their individual backgrounds. Several institutions described data they had collected over the years about their experience with specific high schools, including the number of applicants over the past three to five years and GPA and score information for each applicant. Some maintain databases of information about the high school curriculum (such as the number of AP® or IB courses) and/or how well students from the school performed during their freshman year. One institution uses this information to adjust upward the GPAs of students who attend schools with particularly rigorous grading standards. Another institution (from a race-neutral state) utilizes the Enrollment Planning Service to identify schools with large numbers of students from the lowest level of family income and gives applicants from those schools a "plus" in the selection process.

Other important contextual information relates to a student's personal circumstances, such as whether or not the student had to work, provide care for family members, would be the first in the family to attend college, or overcome personal hardships. This last consideration has become the subject of public scrutiny and occasional derision, in part because of concerns that students may be exaggerating or manufacturing "sob stories" in an attempt to gain admission. Nonetheless, most institutions believe that having overcome adversity is an appropriate characteristic to consider, but that there needs to be a clear definition of what it means, and readers must be vigilant for possible fraud.

[13]See the University of California–Office of the President Web site for a description of their comprehensive review, questions and answers, and various reports about the selection process. http://www.ucop.edu/news/comprev/welcome.html.

While many selective private institutions have long requested counselor and/or teacher recommendations, more large public institutions have added or are considering the addition of this information to a student's file. Teacher and counselor recommendations are useful not only to provide contextual information but also to verify what the student had included on the application. However, some expressed concern about the additional burden this would place on already overworked counselors and teachers and the fact that the most eloquent recommendations often come from the best schools.

Obviously, the lessons learned by the University of Michigan's undergraduate admissions program were of considerable interest to participants. Their application form has been expanded to include the following:

- *Educational background of parents, grandparents, and siblings*
- *Student household information, including size of family and family's income*
- *Space for student to highlight notable awards, honors, or achievements and describe most meaningful activities*
- *New short-answer questions that encourage applicants to describe intellectual interests, expected contributions to campus community, professional expectations, and/or unusual life experiences*
- *Specific topic suggestions for essay response to give evaluators the richest possible picture of the student's intellect, character, or personal circumstances*
- *Student's language background, including native language*

In addition, the counselor form has been expanded to provide more extensive and comprehensive information about the student's background and academic preparation. A new teacher recommendation form has been developed to provide additional insights into the student's personal circumstances, obstacles overcome, or disadvantages that may have affected academic achievement.

Significant processing changes are also being made. All 25,000 applications will receive at least two independent readings. About 16 new readers will be hired and trained to conduct the first review of all applications. A second (and independent) review will be made by the admissions staff member responsible for the geographical area the student comes from. A third reader will be brought in if the two readers do not agree on the decision. The University has defined the specific qualities that readers are to consider, including the educational environment of the student, various evaluative measures, personal background, geographic considerations, extracurricular activities, service and leadership, extenuating circumstances, and other considerations.

This new process will be costly and require the addition of a night shift to process the additional information from all applicants. Several days after the College Board seminar in Ann Arbor, the University of Michigan issued a press release with further details about their new procedures. It was reported that the admissions staff would increase from 17 to 22 and that the new system would cost an additional $1.5 to $2 million to operate in its first year, but that expenses were predicted to fall over time.[14]

Throughout the seminars, participants noted the challenges of trying to

[14]Peter Schmidt, *The Chronicle of Higher Education*, August 29, 2003. Complete information, including the new application form, can be found at www.admissions.umich.edu/process/.

implement changes in their procedures for the current admissions cycle. Most had already published and distributed their application materials, and admissions counselors would soon be beginning their fall recruiting travel. In addition to time constraints, many institutions have also experienced major budget cuts, making it difficult to consider more costly recruiting or processing procedures. At the same time, many institutions that had previously been relatively "open door," particularly those in the public sector, have experienced increases in applications and/or enrollment caps, and have had to become more selective. Nonetheless, institutions remain committed to doing as much as possible to enroll a diverse student body, although some participants acknowledged that change would be more evolutionary than revolutionary.

Representatives from many institutions that currently read all folders and consider race as one of many factors acknowledged that the Supreme Court decisions had prompted them to evaluate all aspects of their procedures. One panelist noted, "The devil is in the details." For example, some institutions had special admissions committees that reviewed all minority applicants who had been denied admission under regular procedures. Others assigned minority applicants to be evaluated by specially trained readers or special minority review committees. Because these practices might serve to insulate a category of applicants from competition with all other applicants, it was anticipated that these processes would be changed.

It was also suggested that institutions evaluate how they use rating scales, what criteria are included, how detailed the standards are, and how consistently these standards are applied by different readers. During committee reviews, many institutions work from reading rosters (dockets). What information is included on these summaries and how is it used? Also, how do institutions use the daily or weekly logs that monitor the characteristics of the class as the reading process unfolds?

Finally, panelists at several seminars urged their colleagues to use the Supreme Court's decisions as an impetus to engage in the type of broad assessment of their admissions policies described in the preceding section. For example, this is an opportune time to engage the faculty and others on campus in a discussion of the definitions of merit and what qualities they would like to see more or less of in their classrooms and on campus. What are the definitions of academic and personal power that the admissions policies should be employing? One dean of admissions suggested four elements: context of the student's background, past and potential for future contributions, preparation, and promise.

Participants soberly noted that many current admissions directors began their careers during the civil rights struggles of the 1960s and 1970s and that the *Bakke* decision was embraced as a means to achieving racial equality in higher education. While the current Court's decisions permit institutions to continue race-conscious admissions policies, the public has come to embrace divergent views of the meaning of "civil rights." The admissions profession needs to anticipate what an admissions process might look like if race were not permitted as one of many factors that could be considered.

## V. COMMUNICATION COUNTS: THE POLITICAL, PUBLIC RELATIONS, AND OTHER IMPLICATIONS OF THE DECISIONS

The final panels at each seminar addressed the broader implications of the Supreme Court's decisions. In addition to enrollment management professionals, panelists included other senior administrators, faculty, and individuals with experience in corporate communications and journalism. Many of the same themes touched on during earlier parts of these meetings were highlighted during this concluding session.

At each seminar, there was a consensus that even though the Supreme Court's decisions represented an important legal victory, the opponents of affirmative action would continue to press their agenda through voter referenda, legislation, and the media. Just as the overwhelming majority of admissions and financial aid professionals believe in the correctness of their support for affirmative action and promoting access, opportunity, and diversity on their campuses, it must be acknowledged that there are people (including some on campuses) who just as strongly believe that affirmative action is wrong.

As educators evaluate procedures and policies to assure they are consistent with the Supreme Court rulings, they should remember that university practice must be rooted in their institutional mission and guided by solid educational rationales. Several panelists noted that future lawsuits were inevitable and that the dissenting opinions in the University of Michigan case provided a useful outline of the arguments that a future challenge against race-conscious policies might take. At the same time, institutions might be subjected to challenges from the other side. One panelist urged "institutional fortitude," saying that colleges and universities should take the right, honorable, and decent path and not abandon their diversity goals.

It is important to understand the arguments advanced by organizations such as the Center for Individual Rights and to analyze their media messages. They have recast the concept of affirmative action as "racial preferences," "quotas," and "preferential treatment"—certainly undemocratic sounding terms. They characterize affirmative action as a practice of admitting marginally qualified minority students at the expense of more qualified majority students. And they argue that affirmative action stigmatizes enrolled minority students who question whether they were admitted on their merits or by virtue of their racial or ethnic backgrounds.

Several panelists warned that these messages had become prevalent in the public mind and that educators needed to clarify and reframe the issues. Perception becomes reality and ultimately public opinion becomes the court of final opinion. Educators need to find ways to articulate more clearly and more forcefully the importance of diversity, not only from an educational perspective, but also in terms of national security, international competitiveness, and the economic well-being of our country for generations to come. The *amicus* briefs from the major corporations and from retired military leaders had a positive influence on the Supreme Court's decisions, and educators should enlist support from these external communities to inform public

opinion about the importance of diversity. One panelist suggested highlighting the economic benefits of diversity by describing what the demographics will look like 25 years from now and the potential impact on our Social Security if students from all backgrounds do not receive higher education. Diversity should not be described by numbers alone, but rather in terms of social and economic reality. It is also important to communicate that diversity plays a central role in educational excellence and that all students benefit—not just those who might bring diverse backgrounds to the campus.

At the same time, higher education needs to do a better job of explaining how admission works and what criteria are considered in determining who gets admitted and who is denied. Too often, the public perceives merit as grades, courses, class rank, and/or test scores. Colleges and universities must clearly communicate what it values and what qualities it seeks in admission. One panelist noted that traditional academic measures are generally to the advantage of the already-advantaged students since they are likely to come from settings that offer the best academic preparation. Another reminded participants that everybody who succeeds receives some help along the way—from teachers, parents, and/or from policies that seek out students that bring various elements of diversity to campus.

In developing a communications strategy, it is important to recognize that there are many different publics—prospective students and their parents; school counselors, teachers, and principals; alumni; and legislators and other public officials, as well as faculty and administrators and enrolled students. Colleges and universities should make efforts to communicate with each of these groups, recognizing that each will have different concerns and interests. Alumni, for example, are generally concerned that their alma maters retain regional or national prominence. Faculty tend to be concerned about academic standards. Prospective students are interested in whether or not they will be admitted and what the campus climate is like.

Special efforts should be directed to school counselors. Many admissions procedures will change, and counselors need to know what has changed, why, and how it might impact their students. Some may be uneasy about individualized review and concerned that such a process will make it more difficult to predict the likelihood of a student being admitted. Counselors who deal with large numbers of disadvantaged or underrepresented minority students need to know how the changes might affect their students. Counselors who deal with more affluent students need to understand that race-conscious admissions policies will not disadvantage their students.

Admissions officers (from deans to the most junior counselors or recruiters) need to learn to become more effective spokespeople on behalf of their institutional policies. Because admissions staffs meet with thousands of students and parents each year, they are in an excellent position to communicate about affirmative action, how it works, and the reasons why diversity is important. It was suggested that the standard scripts that institutions use with prospective students include discussion of these topics (without waiting for someone to raise a question).

In developing effective messages, avoid larger and complex philosophical issues and instead use simple logical arguments. For example:

- *College admission is a difficult process, and we look at each applicant individually.*
- *Academic background and potential are our highest priorities, but other things count.*
- *Other factors might include athletic skill, legacy status, leadership, artistic talent, and minority status. These might be important, but they count less than academics.*
- *Our use of affirmative action is consistent with our mission (elaborate) and with the recent Supreme Court decisions.*

Educators can learn from basic communication guidelines that many corporations follow, such as:

- *Know your messages and present them consistently and at every opportunity.*
- *Develop a thick skin and realize that everyone will not be open to your views.*
- *Don't directly answer questions as they are framed, but instead recast them to repeat your basic messages. Don't be lured into traps that make you repeat your opponent's point of view.*
- *Know what the debate is really about.*

Although the concept of diversity affirmed by the Court and embraced by many institutions is defined broadly, several panelists noted that the central issue and much of the controversy surrounding the current debate is still centered on race. One panelist quoted W.E.B. Du Bois's introduction to *The Souls of Black Folk* ("…for the problem of the twentieth century is the problem of the color line."[15]) and expressed hope that this would not continue as the problem for the twenty-first century. Another reminded colleagues about the historical context that led to the introduction of affirmative action in the 1960s and the fact that the majority of the U.S. population under 40 know little about the civil rights struggles that permeated the national conscience mid-century. Still others noted that nearly 50 years after *Brown v. Board of Education*, educational opportunity for all too many students is still separate and not equal.

A consistent theme throughout the seminars was the need for higher education to help solve the problem of inequity in elementary, middle, and high schools. It is not simply a matter of acknowledging and compensating for this inequality in preparation, but working in cooperation with the K–12 sector to advance curricular reform, improved teacher preparation, and adequate funding.

Finally, participants reminded each other that in the immediate future, debates about affirmative action and diversity would be political. Everybody who cares about these issues should get involved as individuals—and take responsibility for educating all with whom we interact through strong, clear, and consistent messages about the broad educational, social, and economic benefits of diversity and why it is essential to our nation's future.

[15]Du Bois, W.E.B. *The Souls of Black Folk*, New York, Penguin Group, 1995, page 41.

# VI. APPENDICES

## *Appendix A*

### College Board Seminar and Workshop Implications of the Supreme Court Decisions

| | |
|---|---|
| August 5, 2003 | College of the Holy Cross (Worcester, MA) |
| August 12, 2003 | University of Georgia (Athens, GA) |
| August 14, 2003 | University of Houston (Houston, TX) |
| August 19, 2003 | Doubletree Airport Hotel (San Francisco, CA) |
| August 21, 2003 | University of Michigan (Ann Arbor, MI) |

**10:00 a.m.** **I. Welcome and Introductions**

**10:15 a.m.** **II. Legal Panel**

While some of the press coverage immediately following the Supreme Court's decisions suggest that the court provided admissions professionals a clear roadmap about how institutions could use race as a factor in admissions, a close reading of the opinions yields questions as well as answers. This panel of lawyers—all of whom have experience in areas related to admissions, affirmative action, and diversity policies—will discuss the decisions and explore implications, primarily from the perspective of undergraduate admissions. Although the Court's decisions do not explicitly address other aspects of enrollment management (such as outreach, recruitment, financial aid, and scholarships), the panel has been asked to speculate about the possible implications in those areas also. It should be noted that this panel will not provide legal advice, but rather set the stage for an informed discussion about possible responses by individual institutions to the Supreme Court's decisions in the University of Michigan cases.

**1:00 p.m.** **III. Context Matters: Designing and Implementing Legally Compliant Institutional Policies**

The decisions in the University of Michigan cases provide an impetus for colleges and universities to examine and reevaluate all of their policies that entail any consideration of race and/or ethnic background. Although these cases apply specifically to the selection process in undergraduate and graduate admissions, there are principles from these decisions (and other judicial rulings and regulations) that are related to other institutional policies, such as financial aid and scholarships and outreach programs. This session will discuss the process of self-assessment and provide an outline of critical steps that institutions should consider in evaluating their different policies.

**2:15 p.m.** **IV. Lessons Learned: Different Approaches to Achieving Diversity, Including Race-Neutral Approaches**

The Michigan decisions permit the consideration of race as one of many factors if institutions employ an individualized whole-file review. While the decisions do not explicitly prohibit the use of point-systems *per se*, the particular system used by the University of Michigan's undergraduate program that assigns a rigid value for all underrepresented minority applicants is clearly unconstitutional. The College Board's Admissions Models project identifies the many different ways that institutions currently select students. Which of these practices would pass muster and which should be avoided? In addition, the Supreme Court decisions make it clear that institutions should make good faith efforts to consider race-neutral approaches to achieving diversity. What lessons can be learned from institutions in California, Washington, Texas, Georgia, and Florida that have employed a variety of race-neutral or race-blind approaches to admission?

**3:00 p.m.** **V. Communication Counts: The Political, Public Relations, and Other Implications of the Decisions**

Immediately after the Court's decisions were announced, Ward Connerly was quoted as saying, "Higher education dodged a bullet, but the gun is still loaded." At least one state governor has announced plans to introduce legislation to ban race-based affirmative action and the Center for Individual Rights has instigated an investigation of race-based scholarship and enrichment programs. How can institutions explain to the public the positive aspects of affirmative action and the broader societal benefits that flow from assuring that a diverse student body receives higher education? What is the impact of diversity in higher education on businesses, national security, and other aspects of the country's well-being? How will counselors, students, and their parents react to the ruling and any changes that institutions might make? What are other implications of the decisions?

## *Appendix B*

### Chairs and Panelists

### College Board Seminar and Workshop
### Implications of the Supreme Court Decisions

#### *Chairs*

*John Barnhill, Director of Admissions, Florida State University*
*Andre L. Bell, Vice President, Marketing, Communications, and Enrollment, Bentley College*
*Madeleine Eagon, Vice President for Admission and Financial Aid, DePauw University*
*Nancy McDuff, Director of Undergraduate Admissions, University of Georgia*
*George Mills, Vice President for Enrollment, University of Puget Sound*
*Bruce Walker, Vice Provost and Director of Admissions, University of Texas at Austin*

#### *Legal Panels*

*Jonathan Alger, Assistant General Counsel, University of Michigan*
*Arthur L. Coleman, Attorney, Nixon Peabody L.L.P., Washington, DC*
*Jamie Lewis Keith, Senior Counsel, Massachusetts Institute of Technology*
*Mary E. Kennard, Vice President and General Counsel, American University*
*Marvin Krislov, Vice President and General Counsel, University of Michigan*
*Loretta Martinez, Legal Counsel and General Secretary, Colorado College*
*Patricia C. Ohlendorf, Vice President for Institutional Relations and Legal Affairs, University of Texas at Austin*
*Michael Olivas, William B. Bates Professor of Law, University of Houston Law Center, Director, Institute for Higher Education Law and Governance*
*Russell K. Osgood, President and Professor of History and Political Science, Grinnell College*
*Betty R. Owens, Director of Attorney Development, Vinson and Elkins L.L.P., Houston, TX*
*Scott Palmer, Attorney, Nixon Peabody L.L.P., Washington, DC*
*Benjamin Rawlins, General Counsel, Oregon University System*
*William E. Thro, General Counsel, Christopher Newport University and Deputy State Solicitor for the Commonwealth of Virginia*
*David Williams, Vice Chancellor for University Affairs, General Counsel and Secretary, Vanderbilt University*

#### *Context Matters: Designing and Implementing Legally Compliant Institutional Policies*

*Ed Apodaca, Associate Vice President, University of Houston*
*Frank B. Ashley, Acting Assistant Provost for Enrollment, Texas A and M University*
*Susan D. Bibeau, Director of Admissions, United States Coast Guard Academy*
*Paula Compton, Associate Vice President, Enrollment Services, University of Toledo*
*Georgette DeVeres, Associate Vice President, Admission and Financial Aid, Claremont McKenna College*

*Jean Dobson, Associate Director of Financial Aid, Emory University*
*Marilee Jones, Director of Admissions, Massachusetts Institute of Technology*
*Carol Lunkenheimer, Dean of Undergraduate Admission, Northwestern University*
*Eileen K. O'Leary, Assistant Vice President for Finance and Director, Student Aid and Finance, Stonehill College*
*Mary Ontiveros, Executive Director of Admissions, Colorado State University*
*Bruce Poch, Vice President and Dean of Admissions, Pomona College*
*Joellen Silberman, Dean of Enrollment, Kalamazoo College*
*Deborah Smith, Associate Vice Provost for Enrollment Services, Georgia Institute of Technology*
*Roland Smith, Associate Provost and Adjunct Professor of Education, Rice University*

***Lessons Learned: Different Approaches to Achieving Diversity, Including Race Neutral Approaches***

*Kelli Armstrong, Associate Vice Chancellor for Enrollment Management, University of Massachusetts Boston*
*John Barnhill, Director of Admissions, Florida State University*
*William Bisset, Assistant Vice President for Enrollment Management, Manhattan College*
*Nancy Cable, Dean of Admission and Financial Aid, Davidson College*
*Beverly Morse, Director of Admissions, Kenyon College*
*Ron Moss, Executive Director of Enrollment Services and Undergraduate Admissions, Southern Methodist University*
*Anna Marie Porras, Associate Dean and Director of Freshman Admission, Stanford University*
*Gretchen W. Rigol, Education Consultant, New York, NY*
*Tamara Siler, Associate Director of Admission and Coordinator of Minority Recruitment, Rice University*
*Ted Spencer, Director of Undergraduate Admissions, University of Michigan*
*Bruce Walker, Vice Provost and Director of Admissions, University of Texas at Austin*
*W.W. (Tim) Washburn, Assistant Vice President for Enrollment Services, University of Washington*
*Sue Wilbur, Director of Admissions, Office of the President, University of California*

***Communication Counts: The Political, Public Relations, and Other Implications of the Decisions***

*Alan Acosta, Associate Vice President and Director, University Communications, Stanford University*
*Reginald Barefield, Vice President of Operations, Beststaff Services, Inc.*
*Robert S. Barkley, Director of Admissions, Clemson University*
*Andre L. Bell, Vice President, Marketing, Communications, and Enrollment, Bentley College*
*Dave Hubin, Executive Assistant President, University of Oregon*
*Patricia Marin, Research Associate, Higher Education, The Civil Rights Project, Harvard University*

*Jim Montoya, Vice President for Regions and Higher Education Services, The College Board*

*Lester Monts, Senior Vice Provost for Academic Affairs and Professor of Music, University of Michigan*

*Leo Munson, Associate Vice Chancellor for Academic Support, Texas Christian University*

*Danny Sledge, Dean of Students, Kalamazoo College*

*J. Douglas Toma, Professor, Institute of Higher Education, University of Georgia*

*Dick Yarbrough, Journalist/Writer, Retired Vice President, Public Relations, BellSouth*

*Judith Youngman, Professor of Political Science, United States Coast Guard Academy*

## *Appendix C*

### Excerpts from Institutional Statements Regarding Diversity

***Amherst College***
***Statement on Diversity at Amherst College Board***

Amherst is a community that draws its strength from the intelligence and experience of those who come here to learn, to teach, to work. We reaffirm our goal of fashioning the Amherst College community from the broadest and deepest possible range of talents that people of many different backgrounds can bring to us.

We reaffirm our commitment to equality of opportunity, and to affirmative action under the law as a means of achieving that goal. We will continue to give special importance to the inclusion within our student body, our faculty and our staff of talented persons from groups that have experienced prejudice and disadvantage. We do so for the simplest, but most urgent, of reasons: because the best and the brightest people are found in many places, not few; because our classrooms and residence halls are places of dialogue, not monologue; because teaching and learning at their best are conversations with persons other than ourselves about ideas other than our own.

***Northwestern University***
***Statement of Interest***

At Northwestern, we believe that the excellence of a university is directly proportional to the quality of its intellectual community. People from similar backgrounds can and do learn from each other. However, new approaches to knowledge are most likely to be discovered when scholars from a wide variety of backgrounds are brought together to interact with and challenge one another. In a community like ours, social diversity is a mainspring of intellectual and creative progress and contributes directly to academic excellence.

Such diversity is an important component in the education of our students. As we prepare students to assume leadership positions in our highly diverse, multicultural society, it is essential that they enjoy the opportunity to interact with and learn from other students whose backgrounds and perspectives differ from their own. From such interaction comes a broadening of understanding that will equip them, intellectually and otherwise, to function effectively in our democratic society.

In order to foster that interaction, we have designed our undergraduate, graduate and professional admissions programs to take race into account as one of many considerations in our evaluations of individuals who apply to becomes students at Northwestern. No one factor is determinative, and in executing their responsibilities our admission staffs evaluate applicants' overall capacity to learn and contribute as individuals to the life of the University. We explicitly enjoin the admission staffs not to use quotas.

Northwestern continues to believe strongly that diversity enhances the educational program and mission of the University. We believe further that the pursuit of diversity among students, faculty, and staff is related to our institutional mandate to achieve the highest order of excellence in the work of the University. Finally, our

commitment to diversity is grounded in our commitment to do the right thing. We have a responsibility to extend the benefit of a Northwestern education to highly-talented young men and women from all segments of our society.

***Pomona College***
***Pomona College Policy on Admission***

The future of the nation and humankind depends upon the quality of the education received by young people. Institutions such as Pomona College should prepare their graduates to lead lives of creative leadership and exemplary service.

For that reason, the Board of Trustees believes that the College's student body should be drawn from a pool composed of the most intellectually capable and academically committed college bound students in the nation. From that pool, the College should select students for its entering classes who represent a rich cross section of backgrounds, talents, experiences and perspectives and who offer significant prospects for achievement and leadership at the College and after their graduation. This is essential to the creation of a lively and stimulating educational environment that will prepare graduates for life in a changing world.

***Stonehill College***
***Mission of Stonehill College***

The presence of Catholic intellectual and moral ideals places the College in a long tradition of free inquiry, the engagement with transcendent theological and philosophical ideals and values, the recognition of the inherent dignity of each person, and the sense of obligation to commit oneself to moral ends.

In celebration of this dignity and of the unity of the human family, Stonehill supports a diversity of persons, of opinions and of cultural and religious perspectives. The College affirms that appreciation of this diversity is integral to the acquisition of personal and intellectual breadth.

***University of Puget Sound***
***Mission Statement and Educational Goals***

The mission of the University is to develop in its students capacities for critical analysis, aesthetic appreciation, sound judgment, and apt expression that will sustain a lifetime of intellectual curiosity, active inquiry, and reasoned independence. A Puget Sound education, both academic and co-curricular, encourages a rich knowledge of self and others, an appreciation of commonality and difference, the full, open, and civil discussion of ideas, thoughtful moral discourse, and the integration of learning, preparing the University's graduates to meet the highest tests of democratic citizenship. Such an education seeks to liberate each person's fullest intellectual and human potential to assist the unfolding of creative and useful lives.

***University of Texas at Austin***
***Admission Statement***

A comprehensive college education depends on a robust exchange of ideas, exposure to differing cultures, preparing for the challenges of an increasingly diverse workforce, and acquiring competencies required of future leaders. The University handles a very large number of applications and therefore must select from among this highly qualified pool only the number of students it can accommodate. In addition to an assessment of the academic strength of an applicant's record, admission decisions result from an individualized, holistic review of each applicant taking into consideration the many ways the academically qualified individual might contribute to, or benefit from, the vibrant, diverse, and challenging educational environment of the University.

***University of Toledo***
***Mission Statement***

The University of Toledo, a student-centered public metropolitan research university, integrates learning, discovery and engagement, enabling students to achieve their highest potential in an environment that embraces and celebrates human diversity, respect for individuals and freedom of expression. The University strives for excellence in its service to all constituents, and commits itself to the intellectual, cultural and economic development of our community, state, nation and the world.

***Virginia Tech***
***Mission Statement***

The faculty, employees, and students of Virginia Tech seek to

- *Develop and sustain an increasingly diverse and inclusive community of learners;*
- *Develop an appreciation for and understanding of the benefits of a multi-cultural perspective; and*
- *Establish a set of policies, programs, practices, and resources necessary to achieve excellence, equity, and effectiveness in the research, teaching and learning, and outreach activities of the university.*

**THE SUPREME COURT DECISIONS IN**
**GRUTTER V. BOLLINGER AND GRATZ V. BOLLINGER**

**Prepared for The College Board**
**by Hogan & Hartson L.L.P.**
**July 2003**

## I. INTRODUCTION

**On June 23, 2003, the U.S. Supreme Court issued landmark decisions in two cases addressing affirmative action in college and university admissions. The Court ruled that student body diversity in higher education is a "compelling state interest" that can justify race-conscious admissions policies. It upheld the University of Michigan law school admissions policy as a "narrowly tailored" means to achieve that interest, but held unconstitutional the University of Michigan undergraduate admissions system. The cases produced 13 separate opinions.**

**This White Paper describes the admissions policies the Court reviewed and the lower court proceedings in the Michigan cases (section II), summarizes aspects of the Supreme Court decisions (section III), addresses selected questions college and university admissions officers may have about the cases (section IV), and suggests further questions officials may wish to ask about their own institutional policies in light of the Michigan decisions (section V).**

**This Paper is not legal advice. Administrators are encouraged to consult with the institution's counsel in this sensitive area of law.**

## II. BACKGROUND

### The undergraduate admissions policy [1/]

**In Gratz v. Bollinger, plaintiffs challenged the policy used for undergraduate admissions at the School of Literature, Science and the Arts (LSA) of the University of**

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[1/] See Gratz v. Bollinger, 122 F. Supp. 2d 811, 826-833 (E.D. Mich. 2000); see also Gratz v. Bollinger, 2003 WL 21434002 (June 23, 2003).

**Michigan for the years 1995-2000. Although the Supreme Court addressed only the most recent policy, how the policy changed over the years is noteworthy.**

**In the earlier years, LSA considered race at three points in the admissions process. First, during the rolling admissions process LSA protected a number of seats for certain groups of applicants, including underrepresented minorities, athletes, in-state residents, and foreign students. At the end of the admissions cycle, any of the protected seats that remained open could be filled by applicants from other groups who were not admitted on first review. Second, LSA took race into account in grids that cross-tabulated adjusted grade point average (GPA) with ACT/SAT score. In various years, LSA: (1) used four separate tables, with the table used depending on whether an applicant was in-state or out-of-state, and minority or nonminority; (2) used two tables -- one for in-state and legacy applicants; the other for out-of-state applicants -- with separate minority and nonminority "action codes" determining whether an applicant with particular scores would be admitted, rejected, delayed, or postponed for later reconsideration; and (3) used the same two tables and added 0.5 points to the GPAs of underrepresented minorities. Third, LSA automatically rejected nonminority applicants who failed to achieve a threshold score, without detailed review of their files. All applicants from underrepresented minority groups received further review, regardless of their scores.**

**In 1998, LSA changed its system and began ranking all applicants, using a 150-point scale. Under this system, applicants received 20 points for being a member of an underrepresented minority group. Applicants also could receive 20 points for socioeconomic status or for participation in intercollegiate athletics. Smaller numbers of points were awarded for geographic factors (6 points), alumni relationships (4 points), outstanding essays (3 points), and leadership and service skills (5 points).**

**Beginning in 1999, LSA implemented the policy that the Supreme Court eventually reviewed. It continued to use the 150-point system, but no longer protected seats for minorities nor automatically rejected nonminority applicants based on point scores. It also began to permit admissions counselors to flag for further consideration applications with point scores that otherwise would not result in admission, including those of underrepresented**

minorities, recruited athletes, students from certain parts of Michigan, and applicants with "unique life experiences, challenges, circumstances, interests or talents." The new policy also permitted admissions counselors to flag nonminorities' as well as minorities' files for individualized review, and unflagged minority applicants no longer received individual review.

The law school admissions policy [2/]

In Grutter v. Bollinger, the plaintiff challenged the law school's admissions policies from 1995 to the present. The law school aims to "admit a group of students who individually and collectively are among the most capable students applying to American law schools in a given year." Admissions decisions are based on LSAT scores, undergraduate GPAs, and such "soft" variables as the enthusiasm of recommenders, quality of undergraduate institution, quality of applicant's essay, and areas and difficulty of undergraduate courses. Although the law school uses an index score based on LSAT and GPA, and generally gives a preference to high index scores, the law school's policy is that admissions decisions should not be based solely on index scores. Every application is read in its entirety, and all information in the application is considered pertinent in the admissions decision. Admissions reviewers may exercise discretion to admit some applicants even if they have relatively low index scores.

The policy states two reasons for admitting students with low index scores: (1) some students' index scores may not be good predictors of their performance, and (2) some students may help the law school "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts." Applicants in the second category, referred to as "diversity admissions," include "students with distinctive perspectives and experiences," which may be the product of life experiences or of racial and ethnic status. In recent years, the law school attempted to increase enrollment of students from groups that have been discriminated against in the past, such as African Americans, Mexican Americans, Native Americans, and Puerto Ricans raised on the U.S. mainland.

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[2/] See Grutter v. Bollinger, 137 F. Supp. 2d 821, 825-835, 842 (E.D. Mich. 2001); see also Grutter v. Bollinger, 2003 WL 21433492 (June 23, 2003).

**The law school aims to achieve a "critical mass" of minority students in each class to "ensure their ability to make unique contributions to the character of the law school." Although the law school does not specify how many students constitute a "critical mass," current and former law school officials estimated that it ranges from 10 percent to 17 percent of the class. During the admissions season, the dean and director of admissions review daily reports on the racial and ethnic composition of the incoming class to ensure that a "critical mass" of minority students is enrolled.**

**The lawsuits -- lower court proceedings**

**Lower court proceedings in Gratz v. Bollinger**

**Jennifer Gratz and Patrick Hamacher, white residents of Michigan, applied for admission to LSA in 1995 and 1997, respectively. Although LSA told Gratz and Hamacher that their credentials were in the "qualified" range, it admitted neither candidate on first review of their applications, and ultimately denied both admission. In 1997, they filed suit in the U.S. District Court for the Eastern District of Michigan, claiming that by considering race as a factor in its admissions policies LSA violated the Equal Protection Clause of the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981. The court permitted 17 African American and Latino students and a nonprofit organization, Citizens for Affirmative Action's Preservation, to intervene as defendants. The intervenors alleged that the case threatened African American and Latino students' access to higher education.**

**The district court held that LSA's admissions programs from 1995 through 1998 violated the Equal Protection Clause, but upheld the 1999-2000 programs as constitutional. The court found that precedent and expert reports supported a finding that LSA had a compelling interest in building a diverse student body. The court concluded that the current policy met the standards established by Justice Lewis Powell in Regents of the University of California v. Bakke (1978) because it neither used quotas nor shielded minority applicants from competition for admission. The court held, however, that the 1995-1998 policies were unconstitutional because they impermissibly used race by protecting seats for minorities, using facially different grids, and automatically rejecting only nonminority applicants below threshold rankings.**

**Lower court proceedings in Grutter v. Bollinger**

**Barbara Grutter, a white resident of Michigan who applied for and was denied admission to the University of Michigan Law School in 1996, alleged that the law school impermissibly uses race as a predominant factor in admissions. Ms. Grutter claimed that the law school admissions polices from 1995 to the present violate the Equal Protection Clause, Title VI, and § 1981. The court permitted 41 individuals and three pro-affirmative action groups who supported the admissions policies to intervene as defendants.**

**The district court held that the law school's use of race in admissions decisions violated the Equal Protection Clause and Title VI. The court concluded that the Law School's interest in admitting a diverse class was not compelling because that interest was neither recognized by a majority of the Court in Bakke nor required to remedy past discrimination. The court also held that the law school's admissions policies were not narrowly tailored to serve an interest in diversity.**

**On appeal, the Sixth Circuit, en banc, reversed the district court in a 5-4 decision. The court concluded that the binding holding of Bakke is that diversity is a compelling state interest and that the law school's admissions policies were narrowly tailored to serve this interest because they conformed to Bakke's guidelines. The parties also appealed in Gratz, but the Sixth Circuit did not issue a decision because petitions for certiorari were filed shortly after the Sixth Circuit decided Grutter. The High Court granted the petitions. The case was argued on April 1, 2003.**

## III. SUPREME COURT DECISIONS IN GRUTTER AND GRATZ

**The Supreme Court issued separate decisions in Grutter and Gratz. In Grutter, a 5-4 majority held that student body diversity in higher education is a compelling state interest that can justify race-conscious admissions policies, and upheld the University of Michigan law school admissions policy as a narrowly tailored means to achieve that interest. In Gratz, a 6-3 majority held that the undergraduate admissions system was not narrowly tailored and thus was unlawful.**

**The Supreme Court decision in Grutter**

**In Grutter, Justice O'Connor authored the majority opinion, joined by Justices Breyer, Ginsburg, Souter and Stevens. The Court applied the "strict scrutiny" standard that pertains to race-conscious decisions, but noted that this standard is not "strict in theory but fatal in fact" and must account for "context." "Not every decision influenced by race is equally objectionable," the Court said, "and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context."**

**Compelling interest**

**The Court first held that the law school has a compelling interest in the educational benefits that flow from a diverse student body. Drawing heavily on Justice Powell's opinion in Bakke, the Court "endorse[d] Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions." Justice O'Connor's opinion noted that "universities across the Nation have modeled their own admissions programs on Justice Powell's views on permissible race-conscious policies." Other Supreme Court cases that addressed affirmative action in contracting did not rule out diversity (or other possible nonremedial interests) as a permissible justification for race-based governmental action, the Court said.**

**The Court gave deference to the law school's judgment that diversity is essential to its educational mission, cited "a constitutional dimension, grounded in the First Amendment, of educational autonomy," and said it would presume the university's good faith. The benefits of student diversity are "substantial," the Court said, citing evidence that diversity advances education by breaking down stereotypes, improving classroom discussion and preparing students for the workforce and citizenship. While race does not necessarily determine viewpoint, the Court found, being a member of a minority group is "likely to affect an individual's views." The Court also seemed to cite societal benefits of keeping higher education opportunity open to all races, to enable "[e]ffective participation by members of all racial and ethnic groups in the civic life of our**

**Nation" and permit universities to "cultivate a set of leaders with legitimacy in the eyes of the citizenry."**

**Narrow tailoring**

**The Court also held the law school policy narrowly tailored to meet the compelling interest in diversity. While "outright racial balancing . . . is patently unconstitutional"**
**-- and a university admissions system may not use quotas, have "separate admissions tracks" for minority students, or insulate minority group members from "competition for admission" -- an admissions system may "consider race or ethnicity more flexibly as a 'plus' factor in the context of an individualized consideration of each and every applicant." The law school policy met those criteria, the Court held:**

**First, the law school did not use a quota system. The Court distinguished the law school's goal of attaining a "critical mass" of underrepresented minority students from a quota. "[S]ome attention to numbers" is lawful, the Court said. Underrepresented minority enrollment in relevant years varied between 13.5 and 20.1 percent, "a range inconsistent with a quota." Second, the law school gave applicants "individualized consideration." It did not automatically admit or disqualify them based on race or award "mechanical, predetermined diversity 'bonuses.'" The policy gave substantial weight to diversity factors other than race, and the law school's weighing of those factors "can make a real and dispositive difference for nonminority applicants as well" as minorities. Third, it did not "unduly harm" nonminorities, because the law school took into account their potential contribution to diversity. Fourth, while "all governmental use of race must have a logical end point," in higher education admissions that requirement can be met by "sunset provisions" and "periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity." The Court said it "expect[ed] that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."**

**The Court did not require the law school to exhaust "every conceivable race-neutral alternative," sacrifice its reputation for excellence by lowering standards, or abandon individualized application review. Instead, narrow**

**tailoring requires "serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks," and the law school met this burden. The Court was not convinced that race-neutral systems such as "percentage plans," used for undergraduate public university admissions in some states, would work for graduate or professional schools, and noted such plans may preclude individualized review. However, universities "can and should draw on the most promising aspects of these race-neutral alternatives as they develop."**

**Justice Ginsburg authored a concurring opinion in which Justice Breyer joined. Justices Scalia, Thomas, and Kennedy and Chief Justice Rehnquist each wrote dissenting opinions. The Chief Justice argued that the majority applied a standard more lenient than the "strict scrutiny" required to review government race-consciousness. The university's goal of achieving a "critical mass" of minority students was not credible, he said, because the numbers admitted from different minority groups varied significantly and the percentage of applicants and admittees from each group correlated strongly.**

**The Supreme Court decision in Gratz**

**In a separate decision in Gratz v. Bollinger, the Court noted the holding in Grutter that diversity is a compelling state interest, but concluded that the LSA policy was not narrowly tailored and thus violated the Equal Protection Clause, Title VI, and § 1981. Chief Justice Rehnquist authored the majority opinion, joined by four other Justices. (Justice Breyer also agreed that the LSA policy was unlawful but did not endorse the majority's analysis.)**

**Whereas Justice Powell's opinion in Bakke "emphasized the importance of considering each particular applicant as an individual," the Court found that the LSA policy "does not provide such individualized consideration." The LSA scoring system automatically distributed 20 points to all minority applicants, out of a possible 150 points (100 points guaranteed admission), making the factor of race "decisive" for "virtually every minimally qualified underrepresented minority applicant." This, the Court held, distinguished the LSA policy from the Harvard admissions policy approved in Bakke. Although LSA admissions officers could flag applications of nonminorities as well as**

**minorities for individualized review, the Court said this did not make the policy narrowly tailored because almost all qualified minorities were admitted without such review.**

**Justice Scalia's dissenting opinion in Grutter**

**Dissenting in Grutter, Justice Scalia predicted that the Court's decisions would "prolong the controversy and the litigation" concerning race-conscious admissions. Future lawsuits, he forecasted, may focus on: whether an admissions policy "contains enough evaluation of the applicant 'as an individual' . . . and sufficiently avoids 'separate admissions tracks'"; whether an admissions office goes "below or above" critical mass or pursues it "so zealously . . . as to make it a de facto quota system"; whether in a particular setting "any educational benefits flow from racial diversity" (an issue Justice Scalia said was not contested in Grutter); or whether an "institution's expressed commitment to the educational benefits of diversity" are "bona fide." Lawsuits might also be brought "on behalf of minority groups intentionally shortchanged in the institution's composition of its generic minority 'critical mass,'" said Justice Scalia.**

## IV. A FEW KEY QUESTIONS

**Institutional officials will now be faced with the task of assessing, with advice from counsel, how the Michigan decisions relate to their own institutional admissions policies and other race-conscious programs. The task often will not be easy. The Michigan cases show that, although the Supreme Court agreed that diversity can be a permissible justification for race-conscious admissions decisions, whether a particular policy is lawful depends on its particulars and how it is applied. In many cases, assessment of the lawfulness of an admissions policy or other race-conscious program will depend heavily on specific facts. Confident predictions regarding whether a particular program would be sustained will sometimes be difficult to make.**

**The cases also demonstrate broad skepticism among the Justices about how affirmative action may lawfully be implemented. In Bakke, four Justices would have held that higher education institutions may consider race in admissions to address societal discrimination and that**

**courts should use a standard more deferential than "strict scrutiny" to review affirmative action. The Court did not adopt those views, and it is noteworthy that the current Justices voiced little support for them in Grutter/Gratz.**

**With the foregoing considerations in mind, this section addresses a few questions that administrators are likely to have concerning the impact of the Michigan decisions. Section V poses several more questions that admissions officers may wish to ask about their own institutional admissions policies.**

**What types of institutions are covered? The majority opinions in both cases held that the plaintiffs' statutory claims should have the same result as the constitutional claims. Thus, although Gratz and Grutter involved a public university -- and the Equal Protection Clause of the Constitution covers only "state actors" -- the decisions also apply generally to independent universities, which are subject to applicable civil rights statutes. The decisions focus on higher education admissions policies -- for graduate and undergraduate schools -- and do not directly address primary or secondary school admissions policies. However, a court might also apply in the precollege context the Grutter holding that student body diversity in higher education constitutes a compelling interest that can justify race-conscious admissions policies.**

**What activities are covered? The opinions of the Court explicitly address only admissions decisions. They do not discuss other activities incident to the admissions process, in which race might be a consideration, such as recruitment, pre-enrollment enrichment programs, and retention programs. They also do not explicitly address other activities in which race is sometimes considered, such as race-oriented student groups, clubs and sororities, and minority-associated dormitories and mentoring programs. They do not explicitly address financial aid. In each of those areas, institutions are encouraged to review with counsel the relevance of Grutter/Gratz and other legal developments to particular programs.**

**Other than race, what types of affirmative action are covered? Both of the policies the Court reviewed gave special consideration to members of underrepresented racial and ethnic minority groups. The Court thus did not directly address policies that may treat applicants differently**

**based on sex, disability, sexual orientation, or other factors. Courts generally apply to such classifications standards more deferential (to varying degrees, depending on the classification) than the strict scrutiny standard applicable to race and ethnicity. Courts have applied strict scrutiny to certain other classifications, such as those based on alienage, as well as race and ethnicity. Title VI covers discrimination based on national origin as well as race.**

**Timing. The legal standards the Court announced for review of admissions policies went into effect immediately. Institutions are encouraged to consult counsel regarding whether procedures should be reviewed in time for the current admissions cycle.**

**Impact on other laws and decisions. Before the Supreme Court decided the Michigan cases, lower courts reached varying results in challenges to race-conscious admissions policies, and some states enacted laws addressing such policies. Identified below are certain considerations pertinent to the impact of the decisions in selected states where laws or court decisions have restricted race-conscious admissions in higher education.**

- **Louisiana, Mississippi, and Texas. Grutter overrules the 1996 Hopwood v. Texas holding of the U.S. Court of Appeals for the Fifth Circuit, which covers Louisiana, Mississippi and Texas, that diversity is not a compelling interest that can justify race-conscious admissions. After the Hopwood decision, many institutions in those states suspended consideration of race in admissions decisions. Press reports indicate that some of those institutions may now review their admissions policies in light of Grutter and Gratz.**

- **California, Florida, and Washington State. These states have enacted state laws and regulations that restrict race-consciousness by government, including public universities. Those policies are not vitiated by Grutter/Gratz and remain in effect.**

- **Alabama, Florida, and Georgia. The U.S. Court of Appeals for the Eleventh Circuit, which covers**

**Alabama, Florida, and Georgia, held in 2001 that a University of Georgia admissions policy that gave a fixed number of points to minority applicants was not narrowly tailored. Johnson v. Board of Regents of the University of Georgia. To the extent they are inconsistent, the legal standards announced in Grutter/Gratz now supersede the standards applied in that case.**

**Admissions process features. As noted in the decision summaries above, the Grutter and Gratz opinions discuss features of the LSA and law school admissions policies in the context of the Court's "narrow tailoring" analysis. Admissions officers are encouraged to review with the institution's counsel their institution's policies and procedures in light of that discussion. Certain key policy features that figured in the Court's discussion are encapsulated below.**

**The Court in Grutter indicated that the absence of certain features helped to make the law school policy narrowly tailored. The policy did not:**

- **Involve "racial balancing".**
- **Use quotas.**
- **Have "separate admissions tracks" for minorities.**
- **Insulate minority applicants from competition for admission.**
- **Automatically admit or deny admission based on race.**
- **Award "mechanical, predetermined diversity 'bonuses.'"**

**The law school did:**

- **Give applicants "individualized consideration."**
- **Permit underrepresented minority enrollment to vary in relevant years between 13.5 and 20.1 percent and to differ from minority representation in the applicant pool. These**

**variations, the Court said, were "inconsistent with a quota."**

- **Give "some attention to numbers" of minority students during the admissions process, but, admissions officials said, admissions decisions were not changed based on that information.**

- **Give substantial weight to diversity factors other than race, in a manner that could "make a real, dispositive difference for nonminority applicants as well" as minorities.**

- **Admit only those minority students deemed qualified.**

- **Take into account nonminority applicants' contribution to diversity.**

- **Frequently admit nonminority applicants with grades and test scores lower than those of some rejected minority applicants.**

- **Undertake "serious, good faith consideration of workable race-neutral alternatives that [would] achieve the diversity the university seeks."**

**The Court in Gratz held that certain features contributed to making the LSA admissions policy not narrowly tailored.**

- **It automatically distributed to minority applicants 20 out of a possible 150 points (applicants with 100 points were immediately admitted).**

- **It did not provide "individualized consideration."**

- **It admitted "virtually every minimally qualified underrepresented minority applicant."**

- **Although admissions officers could flag nonminority and minority files for further review, virtually all qualified minorities were admitted without such review.**

- **That LSA received a large volume of applications, making individualized review impractical, did not relieve the university of its constitutional responsibility to conduct individualized reviews.**

## V. SELECTED QUESTIONS ADMISSIONS OFFICERS ARE ENCOURAGED TO CONSIDER ABOUT THEIR INSTITUTION'S ADMISSIONS POLICIES

**Admissions officers and other university administrators may wish to ask the following questions about their institution's own admissions policies.**

- **Does the institution take race and ethnicity into account in making admissions decisions?**

- **What is the institution's rationale for considering race and ethnicity? For example, does the institution believe that diversity furthers the institutional mission? What is the factual basis for that belief?**

- **Does the institution promote the benefits of racial and ethnic diversity in programs other than the admissions policy?**

- **What kind(s) of diversity fit(s) the institutional mission? Is the institution pursuing each of these types of diversity? Does the admissions process adequately account for the potential contribution of both nonminority and minority applicants to institutional diversity?**

- **How is race considered in the admissions process? Is each application reviewed in an individualized manner? If not, what should be done to accomplish individualized review? What additional resources would be required? What changes in the admissions process would be entailed?**

- **Is a points system used to assess applications? Are different cut-offs used for minority and nonminority applicants? Do minority applications receive further review if they have a score or ranking at which nonminority applications do not receive further review?**

- **If admissions officers use a rubric in reviewing applications, is the rubric sufficiently flexible to allow individualized review?**

- **Have race-neutral alternatives been considered and found inadequate to achieve the institution's goals? What is the basis for that finding?**

- **Does the admissions policy include a mechanism for periodic review to determine whether race-consciousness remains necessary? What method is or should be used to make that determination? How often should the policy be reviewed? Who should perform the review? Should that process be open or confidential?**

## VI. CONCLUSION

**The Michigan decisions clarified some questions regarding college and university admissions, but they also raise challenging questions, including about how race-conscious admissions policies and other institutional programs are conceived, expressed, and implemented. The decisions present an opportunity for institutional officials to review programs on their campuses to ensure that the programs are appropriate under applicable legal standards, and fit the institutional mission and goals.**

*Appendix E*

NIXON PEABODY LL
ATTORNEYS AT LAW

**EDUCATION LAW AND POLICY ALERT**

# The U.S. Supreme Court Decisions in *Gratz v. Bollinger* and *Grutter v. Bollinger* (Issued June 23, 2003)

## Case Analysis and Lessons Learned Regarding the Use of Race by Colleges and Universities

**By Art Coleman and Scott Palmer**

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## Introduction

In *Gratz v. Bollinger*[1] and *Grutter v. Bollinger*,[2] the U.S. Supreme Court affirmed the authority of colleges and universities to consider race or ethnicity[3] as one factor among many in admissions decisions where necessary to further their *compelling* interest in promoting the educational benefits of diversity. The Court also held that when colleges and universities pursue this interest, only program designs that ensure individualized consideration of applicants (and their diversity attributes) can be sufficiently *narrowly tailored* to meet federal legal requirements. Thus, the Court upheld the University of Michigan Law School's admissions policy (in *Grutter*), which includes an individualized, full-file review of all applications, while striking down the University of Michigan's undergraduate admissions policy (in *Gratz*), which assigns points to applicants based on certain admissions criteria, including race and ethnicity.

Taken together, these decisions affirm longstanding legal standards – emanating from Justice Powell's 1978 decision in *Regents of the University of California v. Bakke*[4] – and provide a framework that can help guide colleges and universities as they review and consider the use of race-conscious policies in admissions, financial aid, recruitment, and other arenas. This Education Law and Policy Alert from Nixon Peabody LLP provides an initial analysis of *Gratz* and *Grutter* and their implications for higher education, including:

- **Background** on relevant federal law and the Court's decisions (page 2);
- **Key Points and Lessons Learned** from the cases (page 4); and
- **Action Steps** to guide colleges and universities moving forward (page 7).

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Nixon Peabody's Education Team is a leader in preventive law services in education – helping education leaders achieve their educational goals – including their diversity goals – in a manner that meets federal legal requirements. For more information, contact Art Coleman or Scott Palmer at (202) 585-8000 or www.nixonpeabody.com.

## Background

### *The Legal Landscape*

Under the Fourteenth Amendment to the U.S. Constitution and Title VI of the Civil Rights Act of 1964, classifications based on race are inherently suspect, and race-conscious policies are, therefore, subject to "strict scrutiny."[5] Under this standard, the consideration of race in conferring benefits at both public universities and private universities that receive federal funds will be upheld only where the given program serves a "compelling state interest" and is "narrowly tailored" to achieve that interest. Strict scrutiny thus involves an examination of both the ends and the means of race-conscious decisions to ensure that the interests pursued are sufficiently compelling and that the means are narrowly tailored to those ends, so that "there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype."

Prior to the University of Michigan decisions, the Supreme Court had previously held that an institution's *remedial* interest in overcoming the present effects of past discrimination (though not general "societal" discrimination) can be sufficiently compelling to justify the use of race. Furthermore, in his landmark decision in *Bakke*, Justice Powell held that a university's *non-remedial* interest in promoting the educational benefits of diversity could justify the use of race in admissions as one factor among many. However, his "diversity rationale" was rendered in a "compromise" opinion that did not expressly command a majority of the Court. As a consequence, although it became the basis for most higher education programs that consider race or ethnicity, the diversity rationale also became the focus of recent litigation. Most notably, the U.S. Court of Appeals for the Fifth Circuit in *Hopwood v. Texas*[6] concluded that Justice Powell's opinion did not constitute the holding of the Court, and that diversity was not a compelling interest under federal law. The *Gratz* and *Grutter* cases put the diversity rationale directly before the Supreme Court.

In short, the Court in *Gratz* and *Grutter* addressed two issues in deciding whether the University of Michigan's admissions programs were lawful under the 14th Amendment, Title VI, and 42 U.S.C. §1981:[7]

1. Whether the University's interest in promoting the educational benefits of diversity was sufficiently *compelling* to justify using race or ethnicity as a factor; and

2. Whether the specific programs were sufficiently *narrowly tailored* to meet that interest.

### *The Decisions*

In *Gratz* and *Grutter*, the Supreme Court affirmed and expanded upon the principles laid out by Justice Powell in *Bakke*, holding that a university's interest in promoting the educational benefits of diversity are sufficiently compelling to justify the consideration of race and ethnicity in admissions decisions. The Court also described the characteristics of admissions programs that can be sufficiently narrowly tailored to serve that interest.

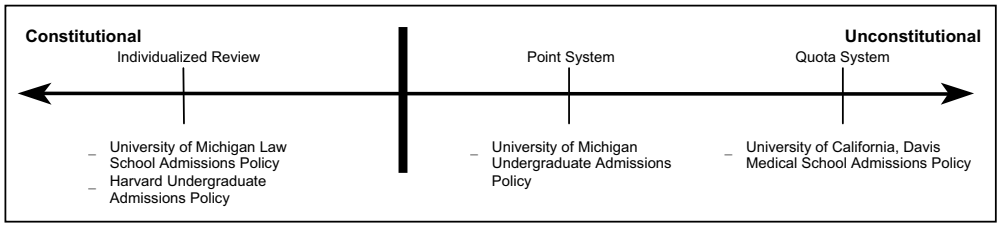
Although both of the University of Michigan's challenged admissions programs considered race or ethnicity as one factor among many with the goal of promoting the educational benefits of diversity, the policies differed in their design. The law school admissions process at issue in *Grutter* involved an individualized, holistic review of each applicant's file that considered both academic criteria (grades, LSAT scores) and other criteria that were important to the law school's

educational goals (such as work experience, leadership and service, letters of recommendation, and life experiences, including whether the applicant was an underrepresented minority). The undergraduate admissions process at issue in *Gratz* used a "Selection Index" where each applicant was awarded points toward admission based on preset criteria, with the maximum number of points awarded to any applicant totaling 150. Underrepresented minorities (as well as socio-economically disadvantaged students and students who attended a high school that served a predominately minority population) received 20 points under this program.

In *Grutter*, the Court (by a vote of 5-4) upheld the law school admissions program in its entirety. The Court recognized that the law school's interest in promoting the educational benefits of diversity is a sufficiently compelling interest to justify consideration of race or ethnicity as one of several factors in admissions decisions. The Court emphasized that it would show deference to the educational judgment of colleges and universities in valuing a diverse student body as part of their educational mission. The Court further found that the law school's individualized review was narrowly tailored – and consistent with the Harvard University admissions plan endorsed by Justice Powell in *Bakke* – in that the admissions program used an individualized review that was flexible, considered multiple factors, and was not unduly burdensome to non-minority applicants.

In *Gratz*, the Court (by a vote of 6-3) recognized (per the Court's decision in *Grutter*) that the undergraduate program served a compelling interest in diversity, but held that the University's admissions program was not sufficiently narrowly tailored because it used a point system that automatically awarded minority students 20 points regardless of other factors and did not allow for an individualized review and comparison of the full breadth or depth of diversity factors.

**UNIVERSITY ADMISSIONS PLANS ANALYZED BY U.S. SUPREME COURT**




The U.S. Supreme Court affirmed the lawfulness of The University of Michigan Law School admissions policy (in *Grutter*) based in part on its individualized review of all applicants (and their diversity attributes) – likening it to the Harvard University admissions policy (referenced with approval by Justice Powell in *Bakke*). The Court held unlawful the University of Michigan undergraduate admissions policy (in *Gratz*) based in part on its point system (which did not permit an individualized review), and had previously held unlawful the University of California, Davis Medical School admissions policy (in *Bakke*) based on its use of a rigid quota.

## Key Decision Points and Lessons Learned[8]

The Court's decisions in *Gratz* and *Grutter* do not establish fundamentally new legal standards. Rather, the cases apply the "strict scrutiny" standard in a specific way to address head-on the question of whether and how universities may consider race or ethnicity as one factor among many to further their interest in promoting the educational benefits of diversity. The cases, therefore, provide an important framework and valuable insights for colleges and universities to use in reviewing their race-conscious, diversity-based programs. Key lessons from the Court's opinions include the following:

1. **The interest of colleges and universities in promoting the educational benefits of diversity, where applicable, is sufficiently compelling to justify the use of race or ethnicity in university admissions.** At the core of its decisions, the Court held that the interest of both the University of Michigan's Law School and its undergraduate program in promoting the educational benefits of diversity is sufficiently compelling to justify the limited use of race in student admissions (expressly rejecting the notion that only "remedial" interests can be "compelling").

    a. **Justice Powell's 1978 opinion in *Bakke* is a correct statement of the law.** The Court expressly "endorse[d]" Justice Powell's opinion and its "diversity rationale," which for 25 years has "served as the touchstone for constitutional analysis of race-conscious admissions policies." As a consequence, the Fifth Circuit's decision in *Hopwood v. Texas* is nullified in so far as it held that the diversity rationale could not be sufficiently compelling to justify race-based admissions programs. By contrast, legislative initiatives that prohibit the use of race as a matter of state policy, such as Proposition 209 in California, are not directly affected by the Court's decisions because the pursuit of diversity-related goals is a policy choice, not a federal legal requirement.

    b. **Colleges and universities are entitled to deference in their mission-driven educational judgments.** Recognizing that context matters when evaluating the legality of race-conscious programs under strict scrutiny, the Court held that the higher education context is unique. According to the Court, "given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition." Therefore, the Court deferred to the University of Michigan's educational judgment that diversity is essential to its educational mission, and held that "'good faith' on the part of a university is 'presumed' absent 'a showing to the contrary.'"

    c. **The educational benefits of diversity are "substantial" and "are not theoretical but real."** In finding this diversity interest to be compelling, the Court strongly endorsed the educational benefits of diversity. The Court recognized that "race unfortunately still matters" in our society and that racial diversity in colleges and universities can help enliven classroom discussions, break down racial stereotypes, and prepare students for success in our increasingly global marketplace. Notably (though its meaning in application requires further examination), the Court also stressed the importance of students from all racial and ethnic groups having access to public universities and law schools. According to the Court, "the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity…. In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity."

The Court rendered its determination of the compelling nature of the diversity rationale based in part on substantial evidence regarding the educational benefits of diversity provided by the University and *amici*, including expert studies and reports and opinions from business and military leaders. Importantly, the Court's decision indicates that where a university's interest in promoting the educational benefits of diversity is central to its mission – a point on which the Court indicated that deference is required though evidence is relevant – then that interest is compelling as a matter of law.

d. **Colleges and universities may pursue a goal of admitting a "critical mass" of minority students as part of their effort to assemble a diverse student body.** The Court held that colleges and universities, in order to promote the educational benefits of diversity, can seek to enroll a "critical mass" of students from different racial and ethnic groups – so long as the critical mass is "defined by reference to the educational benefits that diversity is designed to produce," and the goal is not "some specified percentage of a particular group merely because of its race or ethnic origin."

In so holding, the Court distinguished between the establishment of permissible numerical goals and illegal quotas:

> Properly understood, a "quota" is a program in which a certain fixed number or proportion of opportunities are "reserved exclusively for certain minority groups." Quotas "'impose a fixed number or percentage which must be attained, or which cannot be exceeded,'" and "insulate the individual from comparison with all other candidates for the available seats." In contrast, "a permissible goal… require[s] only a good-faith effort… to come within a range demarcated by the goal itself, … and permits consideration of race as a 'plus' factor in any given case while still ensuring that each candidate 'compete[s] with all other qualified applicants.'" (Internal citations omitted.)

2. **Admissions programs that consider race or ethnicity to promote the educational benefits of diversity must ensure that those factors are considered only to the extent necessary and in a manner consistent with their mission-driven diversity goals.** The Court reaffirmed and expounded upon the basic "narrow tailoring" standards that have guided federal courts for decades, making important distinctions between the University of Michigan Law School's admissions program in *Grutter* and the University's undergraduate admissions program in *Gratz*.

a. **Admissions programs that consider race or ethnicity under the diversity rationale must be designed to ensure individualized review of applicants and their diversity attributes.** The Court held that the importance of individualized consideration of applicants "in the context of a race-conscious admissions program is paramount." To satisfy this standard, universities seeking to justify the use of race or ethnicity in student admissions based on the diversity rationale must include an individualized, non-mechanical, full-file review of each applicant. "In other words, an admissions program must be 'flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight.'"

Thus, the Court in *Grutter* upheld the law school's admissions program, which consisted of a "highly individualized, holistic review" of each applicant's qualifications, including

diversity factors beyond race. By contrast, the Court in *Gratz* struck down the undergraduate admission program, which consisted of a point system where 20 points were automatically awarded to each applicant who was an underrepresented minority. In the Court's eyes, the undergraduate admissions system did not guarantee a sufficiently individualized review by which the full breadth and depth of each applicant's diversity experiences could be evaluated and compared to other applicants. Moreover, the Court stated that the fact that the adoption of an individualized admissions programs might present administrative challenges or burdens based on the volume of applications some colleges and universities receive does not excuse them from the obligation of adopting admissions policies that meet federal constitutional and statutory mandates.

b. **Colleges and universities must consider race-neutral alternatives in good faith, but need not exhaust every option or sacrifice broader educational goals before using race-conscious programs.** According to the Court, the need to ensure the limited consideration of race "does not require exhaustion of every conceivable race-neutral alternative…. Narrow tailoring does, however, require serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks." Thus, the Court encouraged colleges and universities to examine and learn from others with regard to race-neutral alternatives as promising practices develop.

The Court stressed, however, that the consideration of race-neutral alternatives would be evaluated in the overall context of diversity and other mission-driven goals. The Court held that colleges and universities need not sacrifice their "academic quality" or broader educational goals in considering the efficacy of race-neutral alternatives. Thus, a college and university is not required to deemphasize such factors as grades or test scores to promote diversity before using race. In addition, the Court expressly questioned the propriety of "percentage plans" in the diversity context, stating, "[E]ven assuming such plans are race-neutral, they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university."

3. **Colleges and universities must perform periodic reviews of their race-based admissions programs, and such programs cannot be timeless.** The Court reaffirmed that a core purpose of the Fourteenth Amendment is to eliminate distinctions based on race, and, therefore, "race-conscious admissions policies must be limited in time." According to the Court, "[i]n the context of higher education, the durational requirement can be met by sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity." This is consistent with longstanding narrow tailoring requirements, which require periodic review of race-conscious programs.

Finally, the Court ended its opinion in *Grutter* with a concrete prognostication (and notice) for the higher education community and the nation, saying, "It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education…. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."

**Action Steps for Colleges and Universities**

The Court's decisions in *Gratz* and *Grutter* reaffirm the authority of colleges and universities to define and pursue their educational mission – including the educational benefits of diversity –

within federal constitutional and statutory parameters. These parameters are made more clear by the Court's decisions, which build on existing legal standards and provide important information that can guide colleges and universities. As a matter of sound policy – and as required by constitutional law as part of narrow tailoring – it is incumbent on each college and university in light of the Court's decisions to review its race-based policies in admissions, financial aid, recruitment, and more.[9] The following are several recommended steps that colleges and universities should take in that regard:

- ❑ **Inventory all race- and ethnicity-based policies *and* all other diversity-related policies (even if facially race-neutral), including admissions, financial aid, outreach, recruitment, and employment policies.**

- ❑ **Establish an inter-disciplinary strategic planning team and a process to evaluate the relevant policies, now and over time.**

- ❑ **Identify the diversity-related educational goals and supporting evidence that justify each of the relevant policies.**

- ❑ **Rigorously consider race-neutral alternatives in light of institutional goals.**

- ❑ **Ensure that any consideration of race is as limited as possible consistent with institutional diversity goals, including that admissions processes are individualized, flexible, and holistic.**

**ENDNOTES**

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[1] *Gratz et al. v. Bollinger et al.*, No. 02-516, 539 U.S. __ (June 23, 2003).
[2] *Grutter v. Bollinger et al.,* No. 02-241, 539 U.S. __ (June 23, 2003).
[3] In several places, this Alert uses the term "race" or "ethnicity" to stand for both race and ethnicity, such as with regard to "race-conscious" actions.
[4] *University of California v. Bakke*, 438 U.S. 265 (1978).
[5] The Fourteenth Amendment prohibits states from denying "any person within [their] jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. Title VI prohibits discrimination "under any program or activity receiving Federal financial assistance." 42 U.S.C. §2000d.
[6] *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.), *cert. denied*, 518 U.S. 1033 (1996).
[7] Section 1981 provides that all persons "shall have the same right … to make and enforce contracts, … and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." 42 U.S.C. §1981. Applicable to private conduct, §1981 proscribes "purposeful discrimination that violates the Equal Protection Clause of the Fourteenth Amendment."
[8] This section of the Alert discusses the Supreme Court's decisions in *Gratz* and *Grutter* taken together. All quotations are from the Court's opinion in either *Gratz* or *Grutter*.
[9] See generally Arthur L. Coleman, *Diversity in Higher Education: A Strategic Planning and Policy Manual* (The College Board, 2001).

## *Appendix F*

### Participating Institutions

*Adelphi University, New York*
*American University, District of Columbia*
*Amherst College, Massachusetts*
*Anderson College, South Carolina*
*Assumption College, Massachusetts*
*Auburn University, Alabama*
*Austin College, Texas*
*Babson College, Massachusetts*
*Ball State University, Indiana*
*Becker College, Massachusetts*
*Beloit College, Wisconsin*
*Bentley College, Massachusetts*
*Board of Trustees of State Institutions of Higher Learning, Mississippi*
*Boston College, Massachusetts*
*Brigham Young University, Utah*
*Brown University, Rhode Island*
*Butler University, Indiana*
*California College of Arts and Crafts, California*
*California Institute of Technology, California*
*California State University, Bakersfield, California*
*California State University, Chancellor's Office, California*
*California State University, Chico, California*
*California State University, Fullerton, California*
*Central Piedmont Community College, North Carolina*
*Christopher Newport University, Virginia*
*Claremont McKenna College, California*
*Clemson University, South Carolina*
*Colgate University, New York*
*College of the Holy Cross, Massachusetts*
*Colleges of Worcester Consortium, Inc., Massachusetts*
*Colorado College, Colorado*
*Colorado State University, Colorado*
*Dartmouth College, New Hampshire*
*Davidson College, North Carolina*
*DePauw University, Indiana*
*Duke University, North Carolina*
*East Georgia College, Georgia*
*Emmanuel College, Massachusetts*
*Emory University, Georgia*
*Florida State University, Florida*

*Framingham State College, Massachusetts*
*Furman University, South Carolina*
*Georgia Institute of Technology, Georgia*
*Golden Gate University, California*
*Grand Valley State University, Michigan*
*Great Lakes Colleges Association, Michigan*
*Grinnell College, Iowa*
*Harvard Law School, Massachusetts*
*Harvard University, Massachusetts*
*Harvey Mudd College, California*
*Indiana University, Indiana*
*Johns Hopkins University, Maryland*
*Kalamazoo College, Michigan*
*Kenyon College, Ohio*
*Kutztown University of Pennsylvania, Pennsylvania*
*Manhattan College, New York*
*Massachusetts Institute of Technology, Massachusetts*
*Miami University, Florida*
*Michigan State University, Michigan*
*Middlebury College, Vermont*
*Moravian College, Pennsylvania*
*Mount Wachusett Community College, Massachusetts*
*New York University, New York*
*North Central College, Illinois*
*North Georgia College & State University, Georgia*
*North Park University, Illinois*
*Northeastern University, Massachusetts*
*Northwestern University, Illinois*
*Notre Dame de Namur University, California*
*Oakland University, Michigan*
*Oberlin College, Ohio*
*Ohio State University, Ohio*
*Ohio University, Ohio*
*Oklahoma State University, Oklahoma*
*Oregon State University, Oregon*
*Pennsylvania State University, Pennsylvania*
*Pitzer College, California*
*Pomona College, California*
*Princeton University, New Jersey*
*Rice University, Texas*
*Saint Anselm College, New Hampshire*
*Saint Joseph College, Connecticut*
*Saint Mary's College of California, California*

*Saint Mary's College, Indiana*
*Samford University, Alabama*
*Santa Clara University, California*
*Scripps College, California*
*Seton Hall University, New Jersey*
*Simmons College, Massachusetts*
*Southern California College of Optometry, California*
*Southern Methodist University, Texas*
*Springfield College, Massachusetts*
*Stanford University, California*
*State University of New York at Albany, New York*
*State University of New York at Binghamton, New York*
*State University of West Georgia, Georgia*
*Stonehill College, Massachusetts*
*Temple University, Pennsylvania*
*Texas A&M University, Texas*
*Texas Christian University, Texas*
*Texas State University, Texas*
*Texas Tech University, Texas*
*The Education Resources Institute / Higher Education Information Center, Massachusetts*
*United States Air Force Academy, Colorado*
*United States Coast Guard Academy, Connecticut*
*United States Military Academy, New York*
*University of California, Berkeley, California*
*University of California, Office of President, California*
*University of California, Santa Barbara, California*
*University of Chicago, Illinois*
*University of Connecticut, Connecticut*
*University of Florida, Florida*
*University of Georgia at Athens, Georgia*
*University of Georgia at Gwinnett University Center, Georgia*
*University of Houston, Texas*
*University of Houston-Clear Lake, Texas*
*University of Houston Law Center, Texas*
*University of Illinois at Urbana-Champaign, Illinois*
*University of Massachusetts Boston, Massachusetts*
*University of Massachusetts Dartmouth, Massachusetts*
*University of Michigan, Michigan*
*University of Minnesota, Minnesota*
*University of New Hampshire, New Hampshire*
*University of New Hampshire at Manchester, New Hampshire*
*University of North Carolina at Chapel Hill, North Carolina*
*University of Notre Dame, Indiana*

*University of Oklahoma, Oklahoma*
*University of Oregon, Oregon*
*University of Pennsylvania, Pennsylvania*
*University of Puget Sound, Washington*
*University of South Carolina, South Carolina*
*University of South Florida, Florida*
*University of Southern Maine, Maine*
*University of St. Thomas, Texas*
*University of Texas at Austin, Texas*
*University of Texas at Dallas, Texas*
*University of Toledo, Ohio*
*University of Washington, Washington*
*University of Wisconsin - Madison, Wisconsin*
*Valparaiso University, Indiana*
*Vanderbilt University, Tennessee*
*Virginia Polytechnic Institute and State University, Virginia*
*Wabash College, Indiana*
*Wake Forest University, North Carolina*
*Wellesley College, Massachusetts*
*Wesleyan University, Connecticut*
*Western Michigan University, Michigan*
*Wheelock College, Massachusetts*
*Yale University, Connecticut*