

SECTION I:

**Addressing Class, Gender,  
and Race in Higher Education**

## CHAPTER 3

# Shifting from Racial Equality to Racial Diversity:

## MICHIGAN'S ANSWER TO THE AFFIRMATIVE ACTION COLLEGE ADMISSIONS DEBATE

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**Abstract:** In 1997, the Center for Individual Rights filed two lawsuits against the University of Michigan on behalf of two White plaintiffs who believed they were denied admissions because of racial preferences. The diversity rationale, Michigan's counter argument, underscored the links between racial diversity and institutional mission, but rejected long standing social justice arguments of racial/ethnic equality and remediation to combat societal and institutional discrimination. Through qualitative inquiry, this study explores how Michigan shifts the focus of the affirmative action debate from racial equality to a narrower racial diversity argument, which garners broad support and neutralizes the racial preferences rhetoric.

In 1997, the Center for Individual Rights (CIR) filed two lawsuits on behalf of Jennifer Gratz and Barbara Grutter, White plaintiffs who believed they were denied admission solely because of their race. CIR argued that the University of Michigan awarded racial preferences to African Americans, as well as other underrepresented minorities, by considering their racial/ethnic background as a plus factor in the admissions process. But, CIR deemed consideration of race a violation of the 14th amendment's equal protection clause.

When the *Gratz v. Bollinger* and *Grutter v. Bollinger* cases were filed, Michigan's chances of winning were very questionable. Considering the fact that these two cases were filed by the same organization that, in 1996, successfully represented plaintiffs in the *Hopwood* case, supporters of affirmative action had reason to be concerned. With *Gratz* challenging Michigan's race-conscious undergraduate admissions policies and *Grutter* doing the same at the law school, the valued notions of equal opportunity and educational access for African Americans and other minority groups were also challenged. But more importantly, these lawsuits exposed how our country's selective public institutions are gateways to upward mobility, elite social networks, and prime educational resources.

Unfortunately, only a chosen few have an opportunity to attend a selective, public institution and therein lies the source of the conflict and debate regarding access and affirmative action. Given the increased competition for acceptance to elite, public institutions and legal challenges to race-conscious admissions policies in the 1990s, the debate intensified. Though traditionally arguments of racial equality and remediation were used in defense of affirmative action, the University of Michigan, taking the lead, shifted the debate from racial preferences versus racial equality to racial preferences versus racial diversity. Through qualitative inquiry, this study explores how Michigan shifted the focus from equity to a narrower diversity argument, mobilizing broad support and neutralizing the racial preferences rhetoric. However, before one can discuss how Michigan changed the debate, a discussion of race neutral and race-conscious positions is needed.

## RACE NEUTRAL VERSUS RACE-CONSCIOUS

Establishing affirmative action as a legitimate policy has been one of the most difficult and divisive issues in our nation (McPherson, 1983). Since the policy was initiated, race-conscious affirmative action measures have generated debate in the nation and in the higher education community (Fleming, Gill, & Swinton, 1978; Garcia, 1997; Tierney, 1997). During the course of this contentious and emotional debate, proponents and opponents have broached numerous positions and perspectives to denounce or bolster the importance of maintaining affirmative action. The compensatory, corrective, and redistributive arguments are integral to the race-conscious rationale (Brest & Oshige, 1995; Bullington & Ponterotto, 1990; Edley, 1996; Francis, 1993; Swanson, 1981; Tierney, 1997; Wolf-Devine, 1997). The moral and color-blind arguments are also central to the debate (Edley, 1996; Tierney, 1997). The core thesis of each perspective is discussed below.

Compensatory arguments rely on the central idea that damages should only be awarded to victims who were harmed or injured (Edley, 1996; Francis, 1993;

Tierney, 1997). Acknowledging that past forms of discrimination, including slavery, de jure segregation, and Jim Crow, have a lingering, negative affect on present day African Americans in the arena of employment and education, supporters argue that affirmative action, though insufficient, serves to compensate for past forms of societal discrimination (Bergmann, 1996; Eastland, 1996; Simmons, 1982).

Though compensatory perspectives focus on past injustices, corrective arguments place an emphasis on contemporary, societal wrongs and efforts to rectify them (Francis, 1993; Tierney, 1996). Proponents of this position focus on organizational policies and structures which disparately impact particular groups, especially African Americans and other underrepresented minorities. If such disparities exist in an education or business organization, then corrective measures, such as affirmative action, would operate to discontinue discriminatory practices. By exposing and eliminating unjustifiable barriers to minority groups, future discrimination is minimized (Edley, 1996). Hence, this remedy focuses on outcomes (Francis, 1993).

Redistributive arguments assume society is unjust in its distribution of social rewards, power, and resources. Given this assumption, steps must be taken to equalize the extreme imbalance of the haves and have-nots (Francis, 1993), who most often comprise underrepresented minority groups and the poor. To rectify this injustice, affirmative action serves as a redistributive measure to redirect social rewards, resources, and power to minority groups that historically have been excluded from receiving such societal benefits (Swanson, 1981), thereby reducing the disparities that persist.

Although the corrective, redistributive, and compensatory arguments were prominent in the debate, the moral position remained central to both advocates' and opponents' sense of justice with respect to affirmative action. Often, proponents argued that affirmative action was simply the right policy to implement (Edley, 1996; Francis, 1993). Their moral stance was fortified by the understanding that past racial discrimination has not been adequately addressed in this country and continues to influence racial inequities between Whites and racial/ethnic minorities (Bowen & Bok, 1998; Chang, Witt-Sandis, & Hakuta, 1999; Tierney, 1996). In many cases the moral position was intertwined with other supportive rationales, such as corrective and compensatory.

Rivals of affirmative action have stated that the policy is unfair, immoral, and discriminatory (Cohen, 1996; Clegg, 2000; D'Souza, 1991; Edley, 1996). The policy is considered wrong because losers are easily identifiable along racial/ethnic lines—namely Whites who lose due to racial preferences believed to be embedded in the policy (Clegg, 2000; D'Souza, 1991; Edley, 1996; Francis, 1993). Opponents also argue that affirmative action changes the rules of the game, and therefore undermines trust and principles of fairness (Edley, 1996; Francis, 1993).

The race-neutral or color-blind argument directly opposes affirmative action's premise. That is, opponents see the policy as discriminatory, regardless of intent, and therefore will not support a policy that they believe promotes government-sponsored discrimination (Clegg, 1998). Color-blind advocates recommend that government entities should aggressively enforce anti-discrimination laws that are on the books (Clegg, 1998; Edley, 1996). Ironically, opponents to affirmative action acknowledge that racial discrimination exists but do not agree that race-conscious measures are the answer (Betzold, 2000; Clegg, 2000; D'Souza, 1991). Class-based measures or percent plans, which intentionally de-emphasize race, have been deemed as appropriate solutions by the race-neutral camp (Bowen & Bok, 1998; D'Souza, 1991; Edley, 1996; Herrnstein & Murray, 1994; Wilson, 1995) because some assume that class-based affirmative action, for instance, would redistribute awards to the most needy and deserving (Duster, 1996; Lucas, 1996; Malamud, 1997). Supporters of affirmative action have had mixed responses to various race-neutral strategies; however, the central retort has been that race cannot be ignored, given the historical legacy of racial discrimination and segregation in this country. Overall, race-conscious, moral, and color-blind arguments were prevalent in the affirmative action debate. Opponents to affirmative action often used the color-blind stance, while others argued from different racial equity vantage points. The moral argument was used on both sides.

## **AFFIRMATIVE ACTION AND HIGHER EDUCATION**

Prior to the Michigan cases, the debate regarding the use of race-conscious or race-sensitive policies to promote greater access for African Americans and other under-represented groups was not new to higher education. Since *Bakke*, the debate has essentially been framed by those in opposition to race-conscious admissions strategies, with supporters in higher education struggling to articulate why such strategies are acceptable. Because various higher education constituencies, including White parents and their prospective students, believe the admissions process should be race-neutral and based solely on merit, opponents advanced a system that only considers students' talents and skills, as well as other individual characteristics (i.e., socio-economic status), but not racial background. If race was a part of the formula, the admissions process was characterized as unfair and discriminatory.

While constituents who opposed consideration of race argued that utilization of race as a factor is unfair to White applicants; those who advocated for racial consideration argued that accounting for race helps to minimize the unfair advantages White applicants are automatically afforded in the process.

Although many perspectives have been expressed on this issue, essentially two different camps have emerged and weighed into the debate. On one side, there was the racial preferences camp that insisted policies and practices should be race-neutral. On the opposite side, the race-conscious camp argued that using race-sensitive policies was needed to provide equal access, educational opportunity, and a remedy for recent past and present day discrimination. Defenders of the race-conscious position also argue that elite, public institutions have historically excluded and discriminated against minority student applicants by implementing policies and practices that favor White applicants. Therefore, affirmative action in admissions must be used to remedy present institutional and societal discrimination.

Unfortunately, the courts have turned away from this position as a remedy for societal discrimination (*Bakke*, 1978; *Podberesky*, 1994). Since the courts no longer legitimized race-conscious remedies as a means of correcting societal discrimination, the racial diversity camp surfaced and argued that within the context of higher education, diversity was important to educational excellence and a democratic society. Before the diversity rationale gained notoriety, however, the University of Michigan had to engage strategically in the debate to defend its mission, institutional integrity, and race-conscious policy.

## DESIGN OF THE STUDY

The University of Michigan was selected for a detailed case study analysis to explore the phenomenon of institutional engagement in a public policy debate in which race was the central issue. More specifically, this study sought to understand how Michigan defended its race-conscious policies, while shifting the debate. In order to examine this phenomenon, institutional responses were examined to determine which approaches were used to defend Michigan against charges made by plaintiffs in both *Gratz* and *Grutter* cases. A case study design was most appropriate for three reasons:

1. a case study design enables the researcher to investigate the phenomenon at the macro level while also examining units of analysis that may be pertinent to the phenomenon but are not identified at the outset of the study;
2. this approach allows the researcher to investigate “a contemporary phenomenon within its real-life context” (Yin, 1994, p. 13); and
3. a case study allows the researcher to examine a single unique case in-depth, especially if the “boundaries between the phenomenon and its context” (Yin, 1994, p. 13) are seemingly unclear.

Purposive sampling guided the selection of informants in order to acquire participants who had the greatest potential to provide information for case development (Creswell, 1998). A total of 26 informants were chosen due to their high levels of engagement with either the law school or undergraduate lawsuits. Informants included former President, Lee Bollinger; former Law School Dean, Jeffrey Lehman; former Associate Vice President and Deputy General Counsel, Elizabeth Barry; and former Provost, Nancy Cantor. These informants, along with others, including representatives of the Center for Individual Rights, the American Council on Education, and legal council for the student defendant intervenors of the *Grutter* case, were critical to providing substantive data that described the interplay between the parties most intimately engaged in crafting and implementing the institution's response strategies from 1997, when the cases were filed, to 2003, when the United States Supreme Court ruled on both cases.

Guiding all interviews were four major questions that probed for response strategies during the course of litigation. The questions were:

1. What is the organization's position with respect to the legal challenges?
2. What strategies and tactics have been used to advance the organization's position?
3. How has the organization handled roadblocks or challenges? and
4. What role has the organization played in this entire litigation process?

Questions were broad to avoid imposing any relationships or directionality (negative or positive) to any aspects of the phenomenon to allow unanticipated themes or constructs to emerge (Creswell, 1998).

Overall, data were collected over a six year period (1997 to 2003) from four sources:

1. 26 audio-taped interviews of informants—the primary data source, which was collected by 2001;
2. over 100 primary and secondary sources in the form of legal documents, internal reports, memos, electronic messages, web sites, and newspaper articles;
3. participant observations of campus events related to the lawsuits; and
4. the researcher's periodic journaling of reflections and impressions of interviews and campus events from 1997 to 2002.

Interviews ranged from 20 minutes to 2 hours, averaging one hour in length. All interviews were audio-taped and completely transcribed.

### Data Analysis and Verification

For the first stage of analysis, rich, thick case descriptions were developed pertaining to the chronology of events. In case descriptions, pertinent facts, major players, events, interactions, and outcomes related to particular aspects of the case were highlighted (Creswell, 1998). Following the development of case descriptions, open coding was conducted. According to Strauss and Corbin (1990), "open coding is the process of breaking down, examining, comparing, conceptualizing, and categorizing data" (p. 61). During open coding, the interview data and selected documents were reviewed for "discrete happenings, events, or other instances of phenomena" (p. 61) and classified under coding categories. If these categories seemed to possess similarities, they were grouped into higher-order categories and conceptually identified under a label that captured their shared characteristic(s) (Miles & Huberman, 1994).

With the completion of case descriptions and coding, direct interpretation was applied (Creswell, 1998; Stake, 1995). Interpretation involved examining the descriptive narrative and categories, drawing meaning to develop emergent themes. Interpretation, in this form, required that the data be taken apart and put back together again in more meaningful ways (Creswell, 1998). Categories from open coding aided this interpretive process with the constant comparing of data for conceptual patterns of meaning (Strauss & Corbin, 1990).

While the data was written in a narrative form to capture the "truth" or accuracy of the accounts described, several verification procedures were followed to ensure credibility and trustworthiness of the study (Merriam, 1998). First, different data sources were used to provide corroborating evidence (triangulation). Second, feedback from specific informants was solicited to verify the study's findings and interpretations (member checks). Furthermore, a rich and detailed description of the phenomenon was provided to allow the reader an opportunity to examine the characteristics of the phenomenon and determine the plausibility of the findings (rich, thick description) (Creswell, 1998).

## FINDINGS

From the case study data five strategies emerged that were critical to formulating Michigan's answer to the affirmative action dilemma:

1. establishing a critical position in the debate,
2. framing the message,
3. going public,
4. addressing the media, and
5. recruiting allies.

Each organizational response enabled Michigan to strengthen its national position as a defendant of race-conscious policies.

### Establishing a Critical Position in the Debate

To establish a critical position in the affirmative action debate, the University of Michigan had to confront the polarizing language of the race neutral camp. The rhetoric was staggering, convoluted, and emotionally charged. The interplay between terms, such as racial preferences, reverse discrimination, angry White males, merit, fairness, class remedies, intelligence, testing, racial conflict, and individual rights, conjured heated debates among the higher education community, as demonstrated in the hundreds of news articles, editorials, and op-ed pieces printed in the national press (Green, 2003a). To oppose the racial preferences camp and its rhetoric, Michigan had to respond strategically to the Center for Individual Rights, one of the conservative organizations publicly advancing an anti-affirmative action campaign (Schmidt, 2003).

The Center for Individuals Rights completely denounced the use of racial preferences in admissions; however, other types of preferences were not ruled out. For example, students who were economically disadvantaged could be given additional consideration in the admissions process. CIR's assumption is that socio-economic status can place one at a disadvantage in the admission process whereas race does not necessarily do so. Mr. Levey, Director of Legal and Public Affairs, explained CIR's position before the cases reached the United States Supreme Court:

Our position, and we believe it's also the position of the Supreme Court, is that racial preferences, explicit racial preferences can only be justified as a remedy for an institution's own past discrimination. And they can't use it to achieve the right racial balance on campus; ...they can only be used to remedy the effects of the institution's own past discrimination. That said though,

we have nothing against true diversity. In other words, if a University is seeking true diversity, diversity of ideas, experiences, backgrounds, philosophy, and racial diversity happens to be a side effect of seeking that, that's fine. We're not against giving preferences based on social economic disadvantages or any other kind of demonstrated disadvantage. But we are against the blind awarding of preferences based simply on skin color.

While CIR spoke against racial preferences, campus diversity was a concept the organization did support in principle. CIR argued that racial diversity was not an outcome that should be forced or contrived but should come naturally as a result of using other factors, such as social economic status. According to CIR, racial balancing among student populations should not be the goal.

Since the Center for Individual Rights had won *Hopwood* (1996), a case which struck down the use of race in admissions for the states within the jurisdiction of the 5<sup>th</sup> Circuit Court of Appeals, and no other public university had won a case based on the diversity rationale, the University of Michigan faced a difficult set of circumstances. Nonetheless, Michigan relied upon a narrow diversity argument to counter CIR's position, highlighting three critical points: the importance of race in American society, the need to expand educational opportunities, and the goal of an integrated society. In 1998, former President Lee Bollinger and former Provost Nancy Cantor wrote an opinion piece that appeared in the Washington Post titled, "The Educational Importance of Race." It reads:

Our public universities have always cast a wide net in admitting students. Selecting a student body is not a simple matter of drawing a line though [sic] some rank ordering of individual applications. Universities have been especially watchful for merit wherever it is found. They have been alert to the potential of those who may not have had full opportunity to manifest their talent....CIR's challenge to "affirmative action" in higher education is a challenge to our philosophy of education and to the historical purposes of our great public universities....They [CIR's objectives] also rest on a profoundly mistaken conception of education and the role of race in a modern education.

CIR seeks to eliminate all consideration of race in college admissions. If it is successful, as it was in an earlier lawsuit against the University of Texas, we will in all probability soon return to a largely segregated system—de facto rather than de jure, to be sure, but segregated nonetheless....The country cannot afford to deprive institutions of higher education of the ability to educate generations of

young Americans—minority and nonminority—in an environment that enables all to flourish, and understand each other, in a truly integrated society (Bollinger & Cantor, 1998, p. A17).

The University of Michigan's counter argument underscored the links between race, the institution's educational mission, a racially diverse student body, and social integration. The emphasis was not on racial preferences, but on providing opportunities to those who otherwise would have been excluded. In addition to rejecting the racial preferences position, Michigan also rejected explanations that placed an emphasis on racial equality and remediation. Hence, according to Michigan, neither racial balancing nor correcting for past discrimination were the intended goals of a racially diverse student population; diversity was simply a means through which selective institutions could move American society closer to "a truly integrated society" by educating "minority and non-minority" in diverse environments for all to achieve their educational and social potential.

### Framing the Message

Taking a critical position divorced from traditional race-conscious arguments and adopting the diversity rationale was an important step for Michigan, since it provided a starting point with which the institution could frame a diversity message and promote what it does best: research. Because Supreme Court Justice Powell's decision in *Bakke* (1978) affirmed that diversity had an essential and compelling role in colleges and universities, many institutions voluntarily implemented race-based affirmative action admissions policies to be more inclusive of under-represented minority groups (Bowen & Bok, 1998; Eastland, 1996; Hurtado, 1999; Synnott, 1979). They argued that a diverse student population benefited the learning environment (Astin, 1993; Brest & Oshige, 1995; Moses, 1994). Others, however, disagreed with this assertion and argued that diversity compromised standards of excellence (Astin, 1993; D'Souza, 1991; Edley, 1996; Smith, 1989). Given the lack of evidence to support diversity claims, framing the message was an important strategy. Elizabeth M. Barry, former Associate Vice President and Deputy General Counsel at the University of Michigan, who had a great deal of responsibility for directing the communication effort connected to the lawsuits, indicated that "empirical proof" was necessary to reinforce the institution's diversity defense:

We were going to defend this suit comprehensively by reliance on the law, in this case mainly the Supreme Court decision in 1978, the *Bakke* case, and buttressing that reliance on the law, with empirical proof that racial and ethnic diversity enhances

education. [Because] there was a proper foundation in educational theory and practice for that view of the law,...we embarked upon creating the record that we have with respect to empirical proof.

To establish the research record, an abundance of data was collected from within and outside of the institution. Both campus-level and national studies became a part of the record to defend the importance of diversity in a campus environment and the need for affirmative action policies to achieve diversity. Former Provost Nancy Cantor, who played a major role in directing the research record's development, added that the University of Michigan had embarked upon a strategy and research agenda that had not been accomplished by any other institution:

We clearly felt that it was important to gather as much data or to use as much data as possible in making that case, since it wasn't a case that had been made with data that much before. I think we felt it was important to both draw on data that our own faculty and staff had collected and also to pull in relevant studies nationally. The Harvard Civil Rights Project had done a fair amount and there were others. We developed a set of expert witnesses that could address the educational value from a number of perspectives.

Before arguing the benefits of racial diversity, Michigan's strategy was to establish that race still mattered and influenced the lives and experiences of Americans in this country. Several expert witness testimonies were dedicated to establishing this connection (University of Michigan, 1999b). Patricia Gurin, Professor Emerita of Psychology at the University of Michigan and former Interim Dean of the School of Literature, Science, and the Arts, submitted the leading expert witness report on the institution's behalf. In discussing the legal strategies of both cases, Gurin indicated that, "because it's [race] the fault line in our society, it's the most important basis of diversity. So, a number of the expert reports were about that, especially Segrue's."

With the salience of race established, Michigan, in collaboration with national scholars, developed an emerging body of research. Seminal publications, such as *Diversity and Higher Education* (Gurin, Dey, Hurtado, & Gurin, 2002), *Shape of the River* (Bowen & Bok, 1998), *Diversity Challenged* (Orfield & Kurlaender, 2001), and *Compelling Interest* (Chang, Witt, Jones, & Hakuta, 2003), were critical in framing the narrative now used to justify the need for racial diversity on college campuses (Green, 2003b). Ultimately, these works fortified the position that diversity benefits all students, majority and minority alike, and demonstrated that interactions between peers of racially diverse backgrounds yield positive educational outcomes for both minority and non-minority students such that "students learn more and think in deeper, more complex ways" (University of Michigan, 1999a, p. 6).

The research record and its connection to the diversity rationale were symbiotic in that each existed for the purpose of aiding the other. While the research record was guided by underlying assumptions of Justice Powell's diversity rationale, the diversity rationale was bolstered by research in a manner that the racial equality argument could not. Because the research record placed the need for diversity in a concrete, tangible educational context versus a broader, racial equality and remediation context, the diversity rationale was framed as a sound and justifiable legal argument that legitimized the use of race in admissions decisions. With a new approach and cutting-edge research to articulate the educational importance of diversity, the University of Michigan asserted itself as a leader in two arenas, diversity research and the affirmative action debate. As history bears out in the *Grutter* (2003) decision, establishing a research record was a vital undertaking that ultimately tipped the balance in Michigan's favor.

### Going Public and Addressing the Press

The University of Michigan's fight for maintaining racial diversity, though devoid of traditional race-conscious positions, still faced criticism from faculty, alumni, and students. In an effort to address criticisms and explain the institution's stance on affirmative action to the campus community, constituent groups, and the nation, Michigan's leadership voiced the institution's position on multiple occasions, in different arenas, and through different venues. The number of venues where Michigan's leadership articulated reasons for defending affirmative action included the courtroom, campus, and higher education community. Because it was important to disseminate this information to multiple stakeholders, a two-pronged communication strategy of going public and addressing the press was devised to best serve the institution's interest.

Elizabeth Barry expressed that typically when parties are involved in litigation, there is a tendency to release as little information as possible or to say nothing at all. But, given the importance of these cases, senior leadership determined that taking the silent approach was not a viable strategy. On the contrary, being open with the press and the public through meeting with editorial boards of newspapers and maintaining a Website on the lawsuits moved the University of Michigan from a defensive stance to an offensive position. According to both Barry and Jeffery Lehman, former Dean of the University of Michigan Law School, opening the lines of communication was a significant step. Barry emphasized going public through the internet:

So, for instance, we created the Website that we have about the case. We put everything up there. We put the legal stuff up there, the legal proceedings, our positions, Q&A; we told people how we do admissions; and, it seems, four years later, that was a no-

brainer to do the Website. But, to be that open is really unique in the context of litigation. And, it was a significant step.

Lehman underscored working with the media:

In terms of the public view, I think the key moment, and I don't know whether this was nine months in or a year in, was when we decided it was time to start taking the offensive and to recognize that the reporters and media people that they're just reporters and media people; they're people with a job. They don't live and work and study in a University; they are doing their jobs. So, about a year into the trial, we started taking our message out on the road and went to visit with editorial boards at newspapers.

To move from a defensive position to a more offensive one, the senior leadership had to become increasingly media savvy and learn to better convey the institution's complex and complicated legal position. Former Dean Lehman best articulated what was needed:

That's part of what put us on the defensive early on after the lawsuits were filed. We were sort of back on our heels for six to eight months trying to figure out why the newspapers were so unkind to us; why they were saying things that weren't true. We did not have the experience in working with the media that we have now and, CIR did....I think our own lack of sophistication with respect to the media was a significant challenge for us to overcome. And I think we've had to work really hard to get better at it.

Using the media to the institution's advantage was an important lesson to be learned. As Lehman implied, CIR had more experience, but those who spoke on the institution's behalf, including the President, Provost, Dean of the Law School, and General Counsel, had to develop a message that took the focus off of CIR's story of the victims and draw attention to Michigan's story of a prominent public institution that was striving to maintain racial diversity for the purpose of educational excellence, its educational mission, and democracy, in spite of opposing forces.

## Recruiting Allies

While communicating the diversity message, Michigan's leaders also sought to develop coalitions and mobilize allies, which was a major undertaking. Involving to a great degree the attention of former President Bollinger, this public institution went to higher education associations, government leaders, and large corporations for public support. Armed with a diversity message and research to substantiate

institutional claims, Michigan's efforts brought prominent people to its side and developed a broad-based coalition of supporters that expanded when both cases reached the Supreme Court in 2003.

Constituent groups on campus and beyond voiced their positions. Alumni, faculty, students, higher education associations, businesses, interest groups, and political figures were all compelled to enter the debate. Through many press releases, opinion pieces to the editor, resolutions, declarations, and statements that were published in newspapers, organizational correspondence, and Websites, opposing constituent groups communicated their respective messages. Most often, press releases announced submission of briefs to the court and/or results of new studies or polls that demonstrated public support or dissatisfaction with affirmative action in the form of racial preferences. Though mounting support was demonstrated for both camps during this six-year period, the University of Michigan was able to recruit key players to the diversity camp, including Former President Gerald R. Ford, the American Association of Universities (AAU), the American Council on Education (ACE), the General Motors Corporation, and the United States military.

Former President Gerald R. Ford, also an alumnus of the University of Michigan, wrote in support of affirmative action and the use of race as a factor in the admissions process. In a 1999 New York Times letter to the editor, Ford stated:

At its core, affirmative action should try to offset past injustices by fashioning a campus population more truly reflective of modern America and our hopes for the future. Unfortunately, a pair of lawsuits brought against my alma mater pose a threat to such diversity. Not content to oppose formal quotas, plaintiffs suing the University of Michigan would prohibit that and other universities from even considering race as one of many factors weighed by admission counselors.

So drastic a ban would scuttle Michigan's current system, one that takes into account nearly a dozen elements—race, economic standing, geographic origin, athletic and artistic achievement among them—to create the finest educational environment for all students (Ford, 1999, p. 15).

Ford's statement clearly does not endorse quotas but does support the type of affirmative action policies that enable institutions to provide an educational environment for students of all different racial backgrounds in order to promote a more diverse and integrated society. But, Ford also points out that "affirmative action should offset past injustices"—racial injustices. Acknowledging that past

racial injustices have occurred and need to be addressed, Ford hints at a race-conscious, equity perspective while incorporating the educational importance of race, which is “to create the finest educational environment for all students.”

Because threats of a lawsuit were made well before the petitions were filed in 1997, former President Bollinger initiated conversations with prominent higher education associations in order to mobilize the higher education community. President Bollinger said, “I felt that we needed to enlist unanimous support of all higher education....And so a lot of work early on was on making sure that AAU, ACE, and other educational institutions were very supportive, publicly supportive.” As a result of these dialogues, in an unprecedented move, AAU and ACE declared their support for diversity. In a 1997 statement on the “Importance of Diversity in University Admissions,” AAU reaffirmed its commitment to diversity and its support for the use of race as one of many factors:

We therefore reaffirm our commitment to diversity as a value that is central to the very concept of education in our institutions. And we strongly reaffirm our support for the continuation of admissions policies, consistent with the broad principles of equal opportunity and equal protection, that take many factors and characteristics into account—including ethnicity, race, and gender—in the selection of those individuals who will be students today, and leaders in the years to come (American Association of Universities, 1997, par. 10).

About one year later the American Council on Education also issued a statement “On the Importance of Diversity in Higher Education” that was endorsed by approximately 60 national associations with higher education affiliations. However, this statement, which appeared in the *Chronicle of Higher Education*, did not squarely confront the issue of using race-conscious admissions policies. After providing a litany of positive outcomes connected to educating a diverse college student population, the statement concluded with the educational purpose of diversity:

Each of our more than 3,000 colleges and universities has its own specific and distinct mission. This collective diversity among institutions is one of the great strengths of America’s higher education system, and has helped make it the best in the world. Preserving that diversity is essential if we hope to serve the needs of our democratic society....Diversity enriches the educational experience....It promotes personal growth and a healthy society.... It strengthens communities and the workplace....It enhances America’s economic competitiveness.

Achieving diversity on college campuses does not require quotas. Nor does diversity warrant admission of unqualified applicants. However, the diversity we seek, and the future of the nation, do require that colleges and universities continue to be able to reach out and make a conscious effort to build healthy and diverse learning environments appropriate for their missions. The success of higher education and the strength of our democracy depend on it (American Council on Education, 1998, par. 1–8).

Although higher education associations, such as ACE and AAU, joined Michigan, former President Bollinger noted that “in order to make the case to the broader public, we needed more than higher education, because people are suspicious of higher education on this and other issues.” Understanding that support was needed from the corporate world and the military, the University of Michigan sought their support. Early in the litigation process, as Bollinger and other university leaders presented their case, support was not forthcoming; however, with the willingness of key individuals, Michigan gradually secured support from General Motors (GM) and other corporations. By the time these cases were accepted by the U.S. Supreme Court, the diversity rationale was solidified and validated by segments of society that seemed to matter most: corporate America and the military.

The GM brief indicated that the “nation’s interest in safeguarding the freedom of academic institutions to select racially and ethnically diverse student bodies is indeed compelling: the future of American business and, in some measure, of the American economy depends upon it” (General Motors, 2003, p. 2). The GM brief further stated:

Diversity in academic institutions is essential to teaching students the human relations and analytic skills they need to succeed and lead in the work environments of the twenty-first century. These skills include the abilities to work well with colleagues and subordinates from diverse backgrounds; to view issues from multiple perspectives; and to anticipate and to respond with sensitivity to the cultural differences of highly diverse customers, colleagues, employees, and global business partners (p. 2).

In addition to General Motors, 65 other leading businesses concurred that diversity is a compelling interest and aids students in learning how to lead and work with others from different backgrounds:

Diversity in higher education is therefore a compelling government interest not only because of its positive effects on the educational

environment itself, but also because of the crucial role diversity in higher education plays in preparing students to be the leaders this country needs in business, law, and all other pursuits that affect the public interest (Fortune 500 Companies, 2003, p. 2).

Retired military leaders, who included all former chairmen of the Joint Chiefs of Staff and Gen. H. Norman Schwarzkopf, the commander in the Persian Gulf War, also filed a brief which echoed similar statements of support, declaring that consideration of race is critical to integrating the military and ensuring national security.

Like numerous selective educational institutions, the military already engages in aggressive minority recruiting programs and utilizes the service preparatory academies and other programs to increase the pool of qualified minority candidates. These important steps are vital to the continuing integration of the officer corps. The fact remains: Today, there is no race-neutral alternative that will fulfill the military's, and thus the nation's compelling national security need for a cohesive military led by a diverse officer corps of the highest quality to serve and protect the country (Retired Military Leaders, 2003, pp. 9–10).

These very important briefs were noted in the *Grutter* Supreme Court decision. Each brief in its distinct way reiterated that diversity was a compelling government interest for our society. Exhibiting evidence from earlier court rulings, internal reports, historical accounts, and empirical research, each party agreed that the use of race-conscious policies was needed to allow the organization, whether educational, corporate, or military, to fulfill its respective mission and purpose.

With higher education associations, businesses, government officials, and military academies steadily coming to the support of Michigan throughout the litigation process, it appears the diversity rationale was the critical piece needed to galvanize support from higher education and different sectors of American life. If Michigan had adopted a racial equity orientation, it is very unlikely that these same players would have come to the institution's aid. Former President Bollinger reflected on these dynamics and expressed as he saw it, their implications:

I think we went from a world in which it was one or two universities to all of higher education, to major political figures and major corporations and unions. And that made the point that this is central to America's identity and its purposes. And it's intertwined. It comes out of *Brown vs. Board of Education*

and the historic commitment of this country to promote racial integration and the role of education, in that process. It has really been a heartwarming and encouraging process for me. I think both Gerald Ford and General Motors and the editorial boards, I think everybody saw it from their own particular angle, but they all looked at education as the source of a kind of melting pot, bringing this society together, making good citizens, making good workers, making good policy. It just resonates with people as something that is so desirable, so important that we don't want to reverse course.

## DISCUSSION

Racial discrimination in education has always been a problem for African Americans in this country, with the courts mediating this problem to the advantage of African Americans in some cases (e.g., *Brown v. Board of Education*, 1954), and to the disadvantage of African Americans in others (e.g., *Hopwood v. University of Texas*, 1996). In the University of Michigan cases, the U.S. Supreme Court had an opportunity to issue a ruling that would benefit or further disadvantage African Americans and other historically under-represented minorities. As indicated above, there were a range of equity arguments that could have been made in support of race-conscious policies. In light of this fact, racial equality arguments seemed the obvious choice for the University of Michigan; however, the institution chose to argue the racial diversity rationale in its defense.

Since Michigan decided to stick strictly with the diversity rationale, it had the support of an earlier Supreme Court decision in *Bakke*. Because *Bakke* upheld racial student diversity in the educational context but ruled against correcting past racial discrimination as a viable argument, one could assume Michigan's leadership believed the institution had greater legal standing if it argued the diversity rationale. What is unique about Michigan taking a narrow diversity focus and rejecting compensatory, corrective, or redistributive arguments is Michigan's method for establishing racial diversity as a compelling, societal interest. While the diversity rationale does not advance the position that race-conscious policies are needed to correct racial inequities, Michigan's research record incorporated evidence to document past and present racial inequities in American life, particularly in the state of Michigan. This type of documentation was needed to substantiate the importance of racial/ethnic student diversity in higher education.

Given the need to establish the glaring racial/ethnic inequities that still remain in the state of Michigan and the country, why reject traditional racial equity arguments? Using any of these claims would have required the University of

Michigan to disclose and document past and present discrimination—not desirable for institutional image, especially if the university desires to increase its enrollment of minority students. Furthermore, the institution had a better chance of winning in court with the diversity rationale. One could also interpret Michigan's actions as a compromise, in that the institution went as far as it could in the research record demonstrating the need for corrective measures without explicitly arguing for them. As an outcome of this legal strategy, many important and prominent constituents came forward and publicly supported the University of Michigan's position by expressing their support for the diversity rationale.

Michigan's diversity message acknowledged that race facilitates difference in our experiences and backgrounds, but also reminds us that at one point in our nation's history, we were legally segregated by race and, as a country, we should not return to that period in our history. With that point made, Michigan framed racial/ethnic differences as an asset to educational environments rather than a liability. The logic is that racial diversity or difference:

1. benefits all students in an educational environment,
2. enhances learning, and
3. in the long run, helps the democratic enterprise.

In addition, linking racial diversity to democracy and educational excellence positively framed affirmative action such that others could and did support the policy. Lastly, the rejection of traditional equity arguments does not preclude advocates who strongly promote racial equality and race-conscious policies from supporting the University of Michigan's position. In light of these conclusions, the narrower diversity argument mobilized broader support, while neutralizing racial preferences, color-blind, and race-neutral rhetoric because racial fairness and racial equity were not central to Michigan's focus. Educational excellence was the focus. By shifting the focus, a significant change is demonstrated in the course of the debate.

Even though the Supreme Court with a 5-to-4 decision deemed the diversity rationale as a legitimate argument for maintaining affirmative action policies (*Grutter*, 2003), the affirmative action debate continues. Our nation's progression from *Brown v. Board of Education* to *Bakke v. University of California*, *Davis v. Grutter v. Bollinger* demonstrates that racial equity for African Americans and other under-represented minority groups in education remains tenuous and riddled with conflict, debate, and compromise. If institutions truly wish to advance the status of African Americans and other under-represented minority groups in this country, then this case study provides five important lessons pertaining to institutional engagement over issues of race:

1. frame a clear, distinct message;
2. establish a critical position that clearly connects with the institutional mission;
3. substantiate message claims with sound educational research;
4. recruit prominent allies from within and outside the higher education community; and
5. through different venues, communicate the institution's message to the public and the press.

Ultimately, the shift from racial equality to racial diversity may have lessened the potency of traditional race-conscious arguments, but the shift has not lessened the level of advocacy and institutional engagement needed to address issues of racial/ethnic discrimination for groups that continue to be impacted by this country's legacy of segregation and discrimination.

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