THE CHRONICLE OF HIGHER EDUCATION
The Chronicle Review

From the issue dated April 23, 2004

http://chronicle.com/weekly/v50/i33/33b01701.htm

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'Integration,' not 'Diversity'

By JEFFREY S. LEHMAN

In December 1997, Barbara Grutter brought a lawsuit challenging the constitutionality of the University of Michigan Law School's admissions policy. In June 2003 the United States Supreme Court issued its opinion in *Grutter v. Bollinger,* definitively rejecting that challenge. I served as dean of the law school throughout the five-and-one-half-year litigation, and my role gave me many opportunities to reflect on the different factors that have made affirmative action such a difficult issue.

As one of the university's public representatives throughout the litigation, I was often called upon to speak and write about the case. It was important to me that I be able to speak consistently, describing the issues in the same terms, regardless of whether my immediate audience was supportive or critical of our admissions policy. It was important that I be able to speak consistently with our published admissions policy and our court submissions. And it was important that I be able to speak in a way that I felt authentically captured the complexities of the issues. As I returned to the topic again and again, I found this to be an exceptionally challenging exercise.

What made the topic so difficult was the way in which Justice Lewis F. Powell Jr.'s opinion in 1978 in *Regents of the University of California v. Bakke* had restricted the terrain on which university officials could address affirmative action. In his opinion, Justice Powell endorsed one particular understanding of why universities have a compelling interest in enrolling a racially diverse student body. He recognized that diversity has *pedagogic* benefits. His opinion describes an environmental condition that enhances students' opportunities to learn. Yet a language that speaks only about the "educational benefits of diversity" offers an incomplete vocabulary for talking and thinking about race and higher education. Over the duration of the lawsuit, therefore, I heard my own voice evolve.

Most Americans resonate with the ideal of colorblindness: that public and private institutions, and even individuals, should not allow their conduct toward a person to be influenced by that person's race or ethnicity. That ideal has found expression in many corners of our society, most notably in the legal doctrine that has interpreted the Equal Protection Clause of the 14th Amendment to the United States Constitution. Under that doctrine, departures from colorblindness are not necessarily unlawful, but (to use the legal terms of art) they are always "suspect"; they demand justification in the form of a "compelling interest."

As I worked alongside many others to explain why, in the context of university admissions, carefully crafted departures from the ideal of colorblindness can be both lawful and appropriate, I found myself referring more and more to an ideal that seems today to carry more resonance with most Americans than the pedagogic notion of diversity. More and more, I invoked the vocabulary of integration. The word "diversity" can feel somewhat one-dimensional, connoting only a property of racial heterogeneity that may or may not exist in a particular place at a particular moment in time. At least today, the word "integration" does a better job of capturing the special importance to our country of undoing the damaging legacy of laws and norms that artificially separated citizens from one another on the basis of race. The enduring scars left by that history pose the greatest practical challenge to our nation's prosperity and, for many, to its democratic legitimacy.

A close reading of the Supreme Court's opinion upholding our admissions policy reveals that, over the span of 25 years from *Bakke* to *Grutter,* the court underwent a similar evolution. Justice Powell's opinion in *Bakke* was succeeded by an opinion for the court that drew on a more satisfying and weightier justification for universities' departure from colorblindness. The "compelling interest" is about more than just pedagogy. It is about the fundamental legitimacy of America's approach to distributing educational opportunity.

The majority opinion in *Grutter* re-situates our understanding of why a preference for integration is appropriate in the context of higher education. Under *Bakke,* universities were authorized to think about racial integration only to the extent it has immediate implications for professors' teaching and students' learning. Under *Grutter,* universities may consider the fact that, if they lack meaningful levels of integration, others may lack "confidence in the(ir) openness and integrity." Universities, especially public universities, may consider their own missions as entailing more than simply the nourishment of student brains and character. They may understand themselves as important institutional actors in the sustenance of an American society that is open to all, in which any young child may find reason to hope that he or she might have access to the opportunities that this nation offers, regardless of his or her parents' race, religion, or wealth.

Jeffrey S. Lehman, president of Cornell University and former dean of the University of Michigan Law School, in Defending Diversity: Affirmative Action at the University of Michigan, *published this month by the University of Michigan Press.*

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Section: The Chronicle Review
Volume 50, Issue 33, Page B17