

CHAPTER SEVEN

EDUCATIONAL BENEFITS FROM DIVERSITY?

As Plato observed, “If you ask what is the good of education, the answer is easy—that education makes good men, and that good men act nobly” . . .¹

Derek Bok

Taking account of race . . . permit[s] students to benefit educationally from diversity on campus.²

William Bowen and Derek Bok

Bowen and Bok cite the “educational benefits of diversity” as one—if not *the*—major justification for using race preferences in college admissions. Yet, like so much else in their book, they provide no meaningful evidence in support of their assertion. Even more intriguing is that on the all-important question of whether students actually do benefit educationally from diversity, they deliberately “decided against using questions that asked about the extent to which the diversity of the student body affected the respondent’s classroom experiences.”³

Patterned after the late Supreme Court Justice Lewis Powell’s orphan reference to “diversity” in *Bakke*,⁴ the so-called diversity rationale was adopted by Justice O’Connor in *Grutter* without any analysis beyond her “defer[ence]” to the Law School’s judgment that “diversity is essential to its educational mission,” and her homage to the repetitive rhetoric from the many *amici* who filed briefs supporting the Law School’s position.⁵ It is here Justice O’Connor mentions THE SHAPE OF THE RIVER as support for the proposition that “student body diversity promotes learning outcomes, . . . ‘better prepares

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students for an increasingly diverse workforce and society, and better prepares them as professionals.”⁶

Justice Clarence Thomas was not fooled. Like Professors Sowell and McWhorter before him, he recognized that “‘diversity,’ whatever it means,” is really nothing more than “a fashionable catchphrase” and not a particularly useful term, “especially when something as serious as racial discrimination is at issue.”⁷ He then appropriately mocked the Law School’s claim that despite its alleged interest in achieving diversity, it simply could not, at the same time, be forced to alter its admissions standards in a way which might jeopardize its “elite”⁸ status:

The Law School believes that the educational benefits of a racially engineered student body are large and that adjusting its overall admissions standards to achieve the same racial mix would require it to sacrifice its elite status. *If the Law School is correct that the educational benefits of “diversity” are so great, then achieving them by altering admissions standards should not compromise its elite status.* The Law School’s reluctance to do this suggests that the educational benefits it alleges are not significant or do not exist at all.⁹

Finally, Justice Thomas exposes the lack of serious intellectual support for either the Law School’s argument or the Court’s eventual enshrinement of “diversity” as a justification for racial discrimination:

A close reading of the Court’s opinion reveals that all of its legal work is done through one conclusory statement: The Law School has a “compelling interest in securing the educational benefits of a diverse student body.” *Ante* at 2341. No serious effort is made to explain how these benefits

fit with the state interests the Court has recognized (or rejected) as compelling,¹⁰ . . . or to place any theoretical constraints on an enterprising court’s desire to discover still more justifications for racial discrimination

* * *

Justice Powell’s opinion in *Bakke* and the Court’s decision today rest on the fundamentally flawed proposition that racial discrimination can be contextualized so that a goal, such as classroom aesthetics, can be compelling in one context but not in another.¹¹ This “we know it when we see it” approach to evaluating state interests is not capable of judicial application. Today, the Court insists on radically expanding the range of permissible uses of race to something as trivial (by comparison) as the assembling of a law school class. I can only presume that the majority’s failure to justify its decision by reference to any principle arises from the absence of any such principle.¹²

In the end, “diversity” has become, as Justice Thomas suggests throughout his reasoned and passionate dissent, nothing more than the *post hoc* rationale (when all other rationales have failed) advanced by universities like Michigan as their justification for using race-conscious admissions.

THE PROPER DEFINITION OF “DIVERSITY”?

Bowen and Bok clearly are among those whom Justice Thomas describes in his *Grutter* dissent as “devotees” of diversity. As Thomas Sowell rather humorously has observed about such folks,

“those who reiterate the word ‘diversity’ endlessly [have] no idea that *diversity is itself diverse* and has many dimensions besides the one with which they are preoccupied.”¹³ Of course, we know that THE SHAPE OF THE RIVER is preoccupied with one form of diversity only: racial diversity. Sowell goes on to note that, “Advocates of diversity in a race . . . sense are often quite hostile to ideological diversity when it includes traditional or ‘conservative’ values and beliefs.” Whether hostile or not, it remains a fact that nowhere in their study do Bowen and Bok attempt to evaluate other arguably far more important aspects of diversity, particularly those relating to socio-economic differences and/or ideology, much less evaluate the educational benefit those particular forms of diversity might bring to a campus.

In fact, as the former president of Texas A&M’s African American Student Coalition noted,¹⁴ the “diversity” which Justice Lewis Powell discussed in *Bakke* was far broader than mere racial or ethnic diversity.¹⁵

More recently, and more to the point, prior to the trial in *Grutter*, law students at both Harvard and the University of Michigan were surveyed by an organization sympathetic to the Law School’s position.¹⁶ What the actual respondents’ comments demonstrated was a strong view that the sort of diversity considered most important to their educational experience was *not* based on race but, instead, was based on ideological and socio-economic class differences. Indeed, in the survey itself, the word “diversity” was left undefined. This led one student quite reasonably to observe in response to questions regarding the impact of *diversity* (and *affirmative action*) policies at his or her law school, “it depends upon how you define [it]”¹⁷ (just as it depends on how one defines “affirmative action,” as even Bowen and Bok recognize¹⁸).

Representative of other responses from this survey were the following:

“I think there can be a lot of diversity even if everybody is of [the] same race.”

“I don’t think skin deep diversity is real diversity.”

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“I just don’t think [diversity] plays that much role in the classroom. It doesn’t matter what color the person is, it’s the idea that’s important.”

“I think that frankly admissions based on race should be discontinued, and should be based more on economic class as opposed to simply the color of one’s skin.”

“[E]conomic and cultural backgrounds [are] more important than race.”

“[R]acial and ethnic diversity is [not] as important as geographical or ideological diversity.”

“[S]kin tone has not made a difference; ideolog[ical] issues have.”¹⁹

However, the University of Michigan’s law students aren’t the only ones who recently have questioned the importance of ethnic diversity in terms of its impact on one’s classroom experience. Michigan’s law *graduates* were asked to provide their own evaluation. In a survey which included a group of University law graduates stretching over nearly three decades (from 1970 to 1996), including all of the University’s minority law graduates during that time frame, the participants were asked to respond to the following question (posed by a trio of University of Michigan professors devoted to the Law School’s race-conscious policies)²⁰: “How much did . . . the following contribute to the value of your classroom experience at the University of Michigan Law School?”²¹ The seven items to be evaluated were: (a) Faculty abilities as teachers; (b) Faculty abilities as scholars; (c) Being called upon in class; (d) Intellectual abilities of classmates; (e) Ideological diversity of classmates; (f) Gender diversity of classmates; and (g) Ethnic diversity of classmates. For each item, the survey’s respondents were to assign a number between 1 (no importance) and 7 (a great deal of importance).²² On the last

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day of trial in *Grutter*, one of the authors of the study, who also was one of the principal architects of the Law School’s race-conscious policies, testified that, among other things, “alumni [in our survey] said a lot of benefit comes from ethnic diversity.”²³ However, when presented with an analysis of the actual numerical rankings provided by Michigan’s law alumni (based on a random sampling of the responses provided by the Law School during the litigation), the witness admitted that items (a) and (d), above, were far and away considered the most important with “ethnic diversity” ranked *least* important, tied with “being called upon in class.”²⁴

EDUCATIONAL VALUE OF DIVERSITY

Notwithstanding the above observations from both law students and law alumni of the University of Michigan, the question of the so-called “educational value of diversity” deserves discussion. First, it goes without saying that *educational benefits* which may be dependent upon racial diversity being present cannot be enjoyed if that diversity is absent. So, two questions arise:

- (1) Does racial diversity *in and of itself* provide educational benefits? (Indeed, does racial diversity in and of itself create meaningful “diversity”?) And if so,
- (2) How does one measure the level of “diversity” necessary to attain these “benefits”? (What is “adequate” as opposed to “inadequate” diversity?)

On the first question, Bok’s Harvard Law School colleague, Professor Alan Dershowitz, observed that

the perceived need for racial diversity in our universities—as an educational goal . . . is simply not a very compelling interest. Many excellent universities have long survived and flourished in the absence of

universal diversity within their student bodies.²⁵

At the time, Professor Dershowitz cited schools like Notre Dame University and Yeshiva University, neither of which has traditionally enrolled large numbers of black students.²⁶ Dershowitz also cited various highly regarded schools of engineering. The California Institute of Technology is a more recent example of an institution which historically has enrolled small numbers of black students but continues to be recognized as one of our most highly-ranked national universities.²⁷ Of course, while a higher black enrollment most certainly would be welcomed at Caltech, the absence of significant black enrollment, in and of itself, seems not to have diminished the exceptional education offered to its students.

In a closely related context, Professor Bok provides a similar observation in the context of faculty hiring:

[T]here is no basis for appointing [a minority faculty member] on the assumption that the mere fact of his belonging to a minority group will automatically add a desired quality of *diversity* to the faculty.²⁸

Bok’s central point—that skin color, in and of itself, may have nothing to do with adding diversity to the faculty—would seem equally applicable to the student body.

Of course, no one suggests that racial diversity can never add to the educational experience of students. Clearly it can, depending upon the talents, values, experiences, and character of the *individual* students involved. But no one can seriously suggest, much less prove, that racial diversity, *in and of itself*, provides educational benefits.

ASSUME DIVERSITY IS BENEFICIAL.

WHAT LEVEL OF DIVERSITY IS REQUIRED TO MAKE IT SO?

Notwithstanding the absence of empirical support for the proposition,²⁹ let us assume for the sake of the authors’ argument that

racial diversity, *in and of itself*, does provide educational benefits. If that is so, how does one *measure* the level of diversity which may be educationally beneficial from that which may not be beneficial? Is a campus which more closely approximates the current percentages of the nation’s races or ethnicities inherently a better campus *educationally* than one which does not? (Recall our earlier discussions about the HBCUs.) Or, depending upon the mission of the school and its location, should it ideally mirror the demographics of a more confined area?

Should a state’s flagship public universities aspire to enroll the precise “mix” of the particular state’s population? (If so, what are states with low to non-existent minority populations to do?) Should highly selective nationally-known public and private universities seek to enroll student bodies which perfectly (or even roughly) reflect the nation’s ethnic mix? Indeed, should our elite national universities racially discriminate in order to enroll a student body reflecting a truly global mix of races and ethnicities?

On the one hand, the answer is a simple “yes.” Ideally, every school could and would enroll a “racially diverse” class, leaving aside for the moment what that actually means. The question is how does one accomplish this consistent with our constitutional promise of equal protection under the law and without setting explicit racial quotas?

CAN RACIAL DIVERSITY BE ACHIEVED
VIA RACE-NEUTRAL MEANS?

The fact is, today, the most prestigious educational institutions in states where racial preferences have been abolished equal or exceed the total enrollment figures for underrepresented minorities (URM’s) found at most of the elite schools³⁰ studied by Bowen and Bok.³¹ This is best illustrated by the experiences in both Texas and California.

Just a few years after race preferences were banned in Texas by the *Hopwood*³² decision, the University of Texas reported total URM enrollment of 18 percent at its flagship campus in Austin, roughly comparable to what the total URM enrollment was pre-*Hopwood*.

Similarly, within five years after race preferences were banned by the Regents of the University of California, and four years after California voters passed Proposition 209, UCLA, one of two flagship campuses of the UC system, reported total URM enrollment of 22 percent. UC-Berkeley, the other flagship campus, reported URM enrollment of 17 percent.³³

In short, both UT-Austin and UCLA (as well as most of the eight campuses of the UC system, including UC-Berkeley) have been able to attain higher total URM enrollments *without using race* than virtually all of the elite schools studied by Bowen and Bok including, in particular, the University of Michigan.

These numbers are important to consider for even Justice O’Connor held that before any race-conscious admissions program would be approved, the proponent must demonstrate that the program is “narrowly tailored . . . to obtain the educational benefits of student body diversity” that the institution is seeking.³⁴ In Justice O’Connor’s words, this “require[s] serious, good faith consideration of workable race-neutral alternatives.”³⁵ Yet her opinion in *Grutter* contained the erroneous assertion that “the Law School adequately considered [and apparently rejected] race-neutral alternatives” which would have been capable of producing a critical mass without forcing the Law School to abandon its academic selectivity.³⁶

The Law School did no such thing. And as Justice Thomas pointed out in dissent (confirming the evidence established during trial), equally selective law schools like UC’s Boalt Hall (as well as selective undergraduate institutions) were able to achieve even greater racial diversity than Michigan’s Law School *without using race*.³⁷

DOES RACIAL DIVERSITY ENHANCE LEARNING?

Another shortcoming of Justice O’Connor’s opinion is its lack of any meaningful discussion concerning the so-called “educational benefits of student body diversity.” She, of course, mentions it,³⁸ but she never once addresses the ultimate question which is this:

Does the racial mix of a particular institution, in and of itself, make it an inherently

better place to learn English literature, Russian history, calculus, physics, engineering, medicine or law, than another college or university with an altogether different mix?

If so, what makes it so?

The permutations are almost infinite. For example, is the ideal campus today, from a racial standpoint, one having approximately 13 percent black students, approximately 11 percent Hispanic students, approximately 4 percent Asian and Pacific Islander students, approximately 1 percent Native American students, with the remaining percentage being predominantly white students?³⁹ And would that particular mix, in and of itself, make it a better institution from an academic standpoint than another institution with a significantly different mix? The fact is, not a single elite college or university campus today appears to have anything near this quota-style mix. But assuming such an “ideal” campus did exist, would that necessarily make it a more ideal learning environment? The following evidence suggests that the racial composition of any given campus, in and of itself, has little impact on the education offered.⁴⁰

Let’s consider a campus which significantly deviates from our country’s current demographic makeup, a campus having, say, 5 percent black students, 32 percent white students, 11 percent Hispanic students, 1 percent Native Americans, and 41 percent Asian students. Would this campus mix create a deleterious learning environment simply because it does not mirror the demographics of America? If so, such a judgment might come as a surprise to the faculty and students at the University of California’s prestigious Berkeley campus.⁴¹

Would a campus without any appreciable number of black (or white or Hispanic or Asian) students necessarily become a poorer learning environment? (Again, recall the HBCUs.) What is an “appreciable” number of black students?

On this last point, we have at least a hint of what Bowen and Bok may be thinking. In his *Foreword* to the paperback edition of *THE SHAPE OF THE RIVER*, Professor Loury says:

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Bill Bowen and Derek Bok *are appalled* at the prospect that blacks might become as few as *two or three percent* of the students on elite college campuses.⁴²

Really?

If Bowen and Bok are appalled at that thought, one wonders if they ever conveyed their concern to the leaders of at least five of the 28 schools they studied which reported black student enrollments in the two to three percent range between 1994 and 1999.⁴³

If they truly *are* appalled at the two to three percent figure, they must get over their angst very quickly once a school gets to four percent. *Ten* of the 28 schools (over one-third) reported black enrollments of four percent or less between 1994 and the fall of 1999.

As for Professor Loury, perhaps he, too, should be “appalled” at the racial mix at his own institution, Boston University, which in recent years reported black enrollments in the three to four percent range. It is noteworthy, however, that BU, despite its relatively low black enrollment, was concurrently ranked by The Princeton Review as the top university in the country in terms of having a “diverse student population.”⁴⁴

IS A POOR(ER) LEARNING ENVIRONMENT CREATED BY A
MIX WHICH IS APPROXIMATELY 90 PERCENT WHITE,
4 PERCENT BLACK, 2 PERCENT HISPANIC, AND
3 PERCENT ASIAN AMERICAN WITH NO NATIVE AMERICANS?

The above figures were recently reported by Denison University.⁴⁵ It unquestionably is among the *least* racially diverse schools studied by Bowen and Bok.⁴⁶ It also happens to be William Bowen’s undergraduate alma mater.

Like most schools, Denison has an active and ongoing commitment “to the philosophy and practice of non-*discrimination* and affirmative action,” the latter of which is described as an effort “to ensure *equal opportunity* in . . . education.”⁴⁷

Contained within a recent version of Denison’s published “Affirmative Action” plan are policies designed to ensure equitable

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opportunities for job applicants, for current employees of the institution and for students.⁴⁸

Denison’s “Statement of Purpose” is also instructive:

. . . [T]o inspire and educate our students to become autonomous thinkers, discerning moral agents and active citizens of a democratic society. . . We envision our students’ lives as based upon rational choice, a firm belief in human dignity and compassion *unlimited by* cultural, *racial*, sexual, religious or economic *barriers*, . . .⁴⁹

An example of Denison’s published “Admission Criteria” is the following:

In evaluating your application to Denison, we give careful attention to the quality of your course load; grade point average and classroom performance; your SAT and/or ACT test scores; written recommendations; and your extracurricular accomplishments at school, in your community or at your job. An interview is not required, though it is suggested.⁵⁰

Not a single word is mentioned suggesting that one’s race is given any consideration in the admissions process. Of course, to do so seemingly would violate Denison’s unambiguous policy of non-discrimination.

Notwithstanding the relative homogeneity of its student body, Denison touts its “diversity.”⁵¹ Representative is the following, which the University included as part of its promotional materials entitled “Denison’s Class of 2003 . . . Who Are They? Why Are They Enrolling?”:

. . . The University, while small, offers a *very diverse learning community* for its students. . . Along with the *diversity*, one also finds unity and respect within the student body. Graduates of Denison are faced with many open doors—doors that might not have been opened had it not been for the atmosphere provided by the University. . .⁵²

Several individual students are highlighted as representative of Denison’s Class of 2003. They would be the envy of any school.

Equally impressive is Denison’s historical commitment to community service.

Based on some of Denison’s more recent promotional materials, neither the students nor the University’s administration seem obsessed with race. At the same time, no one doubts Denison’s commitment to equal opportunity.

Finally, Denison is interesting because alumnus Bowen is also a Life Trustee of the University. If Denison’s relative lack of racial diversity is contributing to a poor educational experience at Denison, one would expect its Board of Trustees to be aware of it, and to be taking action to correct it. One wonders, therefore, what view Life Trustee Bowen has expressed to the University’s administration, faculty and students, and to future applicants, concerning the quality of the education which Denison offers to its students.

Does Bowen, as one would expect, express pride over the educational experience which his alma mater provides—the educational experience which current Denison students feel proud to be part of (indeed, the very education that Bowen himself received and from which presumably he, too, benefited)? Or does he view it as inadequate—today, as well as when he matriculated—because of what he and Bok must view as an extraordinary absence of students of color within its student body?⁵³

The questions raised about campuses without significant numbers of black students apply equally to campuses without appreciable numbers of Hispanics. And here Bok and, in particular,

Bowen must be too appalled even to speak. *Seventeen* of the 28 schools (over 60 percent) recently reported Hispanic enrollments of four percent or less (many, including Denison, with only one to two percent). One would expect this to be a highly troubling set of statistics to the authors; and certainly worthy of at least a mention in their book given the fact that Hispanics have overtaken black Americans as the largest minority group in the nation.⁵⁴

What about campuses with too few Native Americans which, of course, describes virtually every major college and university campus in the United States today?⁵⁵

Does the presence of too many, or too few, black students or Hispanic students create a poorer learning environment, or diminish what otherwise might be a “better” campus from an educational standpoint? Can the presence of too many, or too few, Asian or white students affect a college or university in the same way?

One of the staunchest proponents of “affirmative action” doesn’t think so.

John Hope Franklin, Duke University history professor *emeritus* who chaired President Clinton’s race advisory board, firmly believes that Bates College (which annually has one of the nation’s smallest black enrollments, often in the one to two percent range⁵⁶) offers a superior education to that offered by any number of schools which enroll vastly greater numbers of black students. As previously noted, Professor Franklin similarly expresses no concern over the excellence of the education offered to any student who chooses to attend all-black Morehouse College,⁵⁷ nor any criticism if that same student opts for essentially all-white Hope College.⁵⁸ He describes both as outstanding schools while singling out nearly all-white Bates for special praise.⁵⁹

Fully consistent with Dr. Franklin’s views about the relative unimportance of racial diversity, when measured solely by the numbers, is the earlier-mentioned Bryn Mawr College. It also has one of the smallest black enrollments and an even smaller Hispanic enrollment among the more highly selective institutions. Yet, as previously discussed, Bryn Mawr was ranked as one of the top ten baccalaureate institutions for African American women receiving humanities doctorates.⁶⁰

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What is the effect of having too many students of any one race on a campus? Is it automatically—or even necessarily ever—deleterious? If so, what is the justification for the continuing existence of HBCUs? Do Bowen and Bok consider the educations offered by the HBCUs to be inferior because of their obvious lack of racial diversity? Obviously Professor Franklin doesn’t. Nor does the Mellon Foundation, where Bowen currently serves as its President.⁶¹ Otherwise, the Foundation’s decision to include nineteen HBCUs in its MMUF Program would seem, at a minimum, unwise.

Similarly, the authors’ view of “diversity” cannot be shared by Howard University. Indeed, it is unlikely a view shared by any HBCU. For example, Howard claims a rich and unparalleled diversity even though it enrolls very small numbers of white, Hispanic, and Asian American students. It describes itself as forming “a microcosm of the world population of scholars and students” with a diversity that is based upon geography rather than race:

Howard’s students come from all over the world and more than 100 countries, and faculty from more than fifty countries.⁶²

There is ample reason to concede Howard’s claim as perhaps the most diverse university in the nation; yet it is a “diversity” which most assuredly has little to do with the color of one’s skin. Nor does Howard’s relative lack of racial diversity appear to have had an adverse impact on the quality of the education it offers to its students—nor diminish the extraordinary contributions of its graduates.

EXAMPLES ABOUND OF THE ILLUSORY BENEFITS OF “DIVERSITY”

Consider a campus with nearly even distribution between whites, blacks, and Hispanics: e.g., a campus with 28 percent whites, 28 percent blacks, 32 percent Hispanics, and 12 percent Asians. Does it offer a better educational environment than one with approximately 90 percent white, 2 percent black, 4 percent Hispanic, and 3 percent Asian students?

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Perhaps so, but the first example in the preceding paragraph comes from recent racial and ethnic enrollment figures for the nearly 8,500 undergraduate students attending the University of Houston’s Downtown campus, a large public institution with an announced policy of “open admission.”⁶³ The second represents Hamilton College, a highly selective school which, like Bowen’s alma mater, is part of the authors’ database and overwhelmingly white.⁶⁴

As between UH and Hamilton, which would Bowen and Bok recommend in terms of the overall quality of the education being offered? For those persons who focus solely on *racial* diversity, UH would seem to offer the better educational experience (and indeed it might). Yet UH clearly does not rely on racial preferences to achieve its racial diversity while, according to Bowen and Bok, Hamilton College does.

DOES RACIAL DIVERSITY, IN AND OF ITSELF, IMPROVE CAMPUS ENVIRONMENTS?

The problem with the authors’ suggestion that racial diversity insures enhanced (and presumably measurable) educational benefits and an improved campus environment is that neither proposition has been proven true.

On the latter point, one notable example of the absence of any meaningful relationship between racial diversity and a positive campus environment was that reported at UC Berkeley:

During the 1980s the University of California at Berkeley made such significant strides with respect to diversity goals that no single racial or ethnic group constituted a majority of the student body. Despite these gains, . . . the campus was approaching a point of real crisis in terms of intolerance, resentment, and lack of community.⁶⁵

As to how the race of one’s classmates may add to one’s educational experience, Bok earlier wrote that there is “no way of

predicting how much a minority applicant will actually contribute to the understanding of his fellow students.”⁶⁶ It is an admission similar to what Edward Blum has written:

In truth, race and ethnicity tell us nothing of importance of a person. It doesn’t tell us how smart a person is, how artistic or athletic, if they read novels or if they read TV Guides.⁶⁷

Nothing in THE SHAPE OF THE RIVER proves otherwise.

THE TRANSPARENCY OF “DIVERSITY”

President Clinton, speaking at his last college commencement ceremony as a sitting president, addressed the graduates of Carleton College, a highly selective liberal arts college located in Northfield, Minnesota. Carleton historically has enrolled a very small number of underrepresented minority students. For the academic year preceding President Clinton’s speech, Carleton reported a student body of approximately 3 percent blacks, 4 percent Hispanics and 1 percent Native Americans. Nine percent of the student body was reported to be Asian American, a percentage greater than all URM matriculants combined (which is a common current phenomenon at many highly selective colleges and universities).⁶⁸

Despite a student body in the “appalling” range *vis-a-vis* black enrollment, and in the near appalling range *vis-a-vis* Hispanic enrollment, President Clinton had this to say:

I’ve been hearing about Carleton for years. I have a staff member and advisor, . . . class of ‘85; and his college roommate . . . writes for The Washington Post. . .

They . . . told me that Carleton is my kind of place, a school that celebrates *diversity*; a school whose students and faculty exemplify excellence without elitism; . . .

. . . Yes, you’re a remarkably *diverse* group
.
.
.
⁶⁹

And, of course, President Clinton was right, despite an “appalling” lack of racial diversity on Carleton’s campus when he made those observations.

It also is true that the class of ‘85, which was even less racially diverse when Clinton’s staff member and his Washington Post classmate matriculated,⁷⁰ was *diverse* in the same way the class of 2000 was *diverse*. Like the Class of 2000, Carleton’s Class of 1985 was no doubt comprised of excellent students, even though having a greater number of talented minority students in both classes wouldn’t have hurt. What is clear, however, is that the lack of mere *racial* diversity at Carleton (as defined by Bowen and Bok) does not appear to have handicapped Clinton’s advisor’s, or his college roommate’s, development. Nor does it seem to have harmed their respective careers in any appreciable way.

Despite all of the common sense examples demonstrating that racial diversity has no practical effect on educational outcomes, Bowen and Bok imply throughout their book that “racial diversity” *does* have a positive effect on these outcomes. Yet Bowen and Bok don’t know that (even though they may truly believe it); and their study does nothing to demonstrate it.

They do, however, cite the work—but not the actual words—of one noted researcher, Alexander Astin. They claim that Astin has demonstrated that certain educational benefits result from racial diversity.⁷¹ Yet again, Bowen and Bok err. Long before the publication of their book, Astin said this:

Every aspect of the student’s development—cognitive and affective, psychological and behavioral—is affected in some way by peer group characteristics, and usually by several peer group characteristics. . .

The values, attitudes, self-concept, and socioeconomic status of the peer group *are much more important determinants* of how

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the individual student will develop than *are the peer group’s* abilities, religious orientation, or *racial composition*.⁷²

More recently, Astin, who never appears to have been an opponent of race-conscious admissions, buttressed the position of those who argue an *absence* of proof that racial diversity, in and of itself, produces measurable educational benefits. In a striking rebuke to the University of Michigan’s Patricia Gurin⁷³ and others like her who insist they have empirically shown that more racially diverse campuses better educate their students, Astin disagreed. Their hypothesis, according to Astin, “is yet to be convincingly demonstrated.”⁷⁴

Astin also has referred to the work of researcher J. Mitchell Chang. (Indeed, so did Justice O’Connor in her opinion in *Grutter*,⁷⁵ but selectively so.) According to Astin, Dr. Chang developed a comprehensive measure of student-body diversity as part of his dissertation exploring the effects of racial diversity in higher education.⁷⁶

In his 1996 doctoral thesis, Chang studied seven outcomes: (1) College GPA, (2) Social Self-Concept, (3) Intellectual Self-Concept, (4) Retention, (5) Overall Satisfaction with College, (6) Discussed racial/ethnic issues, and (7) Socialized with someone of a different racial group. For each, Chang hypothesized a positive result from the effects of racial diversity.⁷⁷ However, with the exception of the two “experiential” outcomes (i.e., “discussed racial/ethnic issues” and “socialized with someone of a different racial group”), none of the remaining five educational outcomes were positively impacted by the effects of racial diversity.

What follows is a summary of the relationship between racial diversity and the five educational outcomes, as reported by Chang:

Retention:

- a. *diversity* (heterogeneity) has a *direct negative effect* (contrary to hypothesis)

* * *

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Overall satisfaction with college:

- a. *diversity* (heterogeneity) has an *indirect negative effect* (contrary to hypothesis)

* * *

Intellectual Self-Concept:

- a. *diversity* does *not* have a significant effect on intellectual *self-concept* [contrary to hypothesis]

* * *

Social Self-Concept:

- a. *diversity* does *not* have a significant effect on *social self concept* [contrary to hypothesis]

* * *

College GPA:

- a. *diversity* does *not* have a significant effect on *college GPA* [contrary to hypothesis]⁷⁸

Although Chang expected to find positive relationships between racial diversity and the educational outcomes he studied, his findings failed to support his hypotheses and run directly counter to the assertions of Bowen and Bok. They also run counter to Justice O’Connor’s praise for diversity in *Grutter*.

The positive findings for the two “college experiences” (“discussed racial/ethnic issues” and “socialized with someone of a different racial group”) were also elaborated on by Chang within the text of his thesis. It is a recognition of nothing more than the obvious.

If there are more students of different races present on a campus, it is more likely that students will socialize with someone from a different racial group.⁷⁹ However, according to Chang this appeared to be true only for white (or majority) students. The opposite appeared to be the case for students of color. As Chang reported, “students of color who attend racially heterogeneous (diverse) institutions do not necessarily socialize with someone of a different racial group more than those who attend racially homogeneous campuses. If anything, the negative relationship [for students of color] suggests that *attending a racially diverse campus may strengthen the inclination for students of color to interact with students of their own racial group.*”⁸⁰

With regard to the positive relationship found between “diversity” and the likelihood of discussing racial/ethnic issues, this, again, is recognition of the proposition that the more students of different races present, the more likely racial/ethnic issues may be discussed. However, neither the question itself, nor anything in Chang’s report, suggested that these “discussions” occurred *between* persons of a different race, much less that the content of the discussions were in any manner meaningful in terms of improving racial understanding or racial relations.

It seems unlikely that Bowen and Bok were unaware of Chang’s findings—and whoever was responsible for referencing Chang’s work as support for Justice O’Connor’s opinion certainly *should have been* aware of them—particularly those findings which fail to confirm any measurable benefit on the five educational outcomes he studied. Yet they nowhere are mentioned in THE SHAPE OF THE RIVER. Nor are they mentioned in *Grutter*.

And there is more.

The National Association of Scholars is an organization comprised of professors, graduate students, administrators, and trustees at accredited higher education institutions throughout the United States. The NAS has over 4,000 members, organized into 42 state affiliates, and includes within its ranks some of the nation’s most distinguished and respected scholars in a wide range of academic disciplines.

The NAS opposes racial, ethnic and gender-based preferences in faculty hiring and student admissions. The organization has been an active voice before the United States Supreme Court when such

issues have been considered, including the two recent cases involving the University of Michigan.⁸¹ The NAS believes that attaining racial diversity is “a laudable and desirable goal” but not if accomplished through the use of racial preferences. Barbara Grutter expressed the same view during her case against Michigan’s Law School.

In an eloquent synthesis of why racial preferences should be rejected, both practically and constitutionally, here is what the NAS has said:

. . . [T]he NAS recognizes fully the value of diversity, both in higher education and in American society as a whole, *when such diversity is achieved through equal opportunity rather than [through] racial . . . preferences.*

* * *

. . . The NAS . . . believes, respectfully, that [the arguments that racial diversity is essential to quality education . . . and that racial preferences are the only possible means to achieve diversity among faculties in our country’s educational institutions] are unsubstantiated and erroneous.

* * *

. . . We submit, respectfully, that the [proponents of racial preferences] confuse what they passionately want the empirical research to show with what the empirical research actually does show.

* * *

. . . As the empirical research shows, diversity attained through means other than

racial preferences, quite simply, is markedly different from diversity achieved through racial preferences. Indeed, there is empirical research showing that any gains made by artificially creating diversity, i.e., attaining diversity through racial preferences, are more than offset by negative reaction to using race as a measuring tool. See, e.g., Stephan Thernstrom & Abigail Thernstrom, *America in Black and White* (1997), at 387-88, 405-12, 420-22.

* * *

. . . Moreover, a leading researcher on diversity and the workplace, after conducting a comprehensive five-year study, concluded that emphasizing diversity may stimulate group stereotyping, that other sociological and personality variables were far more important than ethnic-gender labels in explaining social interaction patterns or the cultural tone of an institution, and that the goal of ethnic-gender diversity in education . . . is sullied by perceptual and operational confusion with controversial overt and covert affirmative action preferences. Frederick R. Lynch, *The Diversity Machine* (1997).

* * *

. . . [R]acial preferences in admissions to higher education are not merely ineffectual but . . . they are frequently counter-productive. [Citing Thernstrom, above.]

* * *

. . . Racial diversity, although undeniably important as a societal goal, is not correlated with academic excellence.

* * *

In support of its argument that diversity is correlated with academic excellence, the [proponents rely] heavily on a comprehensive study by Alexander W. Astin. . . [T]he Astin study could not possibly justify any claims about positive effects of faculty racial composition. . .

* * *

. . . Furthermore, . . . Astin[’s] study . . . found a statistically significant correlation between an institution’s perceived “diversity emphasis” and the perception that the institution suffered from racial conflict. Astin, *What Matters in College* (1993), at 341. This finding goes unmentioned . . . as does Astin’s other finding that there was no correlation between the racial composition of an institution’s student body and the educational quality of the institution as measured by eighty-two cognitive and non-cognitive student outcome variables. *Id.* at 362.

* * *

. . . Nowhere [do the proponents] cite any studies that support their dual theses that faculty and student body diversity enhance the quality of education in the sense of improved academic learning by students.

Getting Under the Skin of “Diversity”

Most of the studies deal with secondary educational outcomes such as race relations and attitudes, which may relate to positive effects of education experiences but not to the quality of the education derived.

* * *

The NAS feels confident that American higher education can achieve racial and ethnic diversity without the employment of artificial preferences and discrimination. *Truly effective solutions, however, are likely to require fundamental reforms at the pre-collegiate level.*⁸²

More recently the NAS produced its own comprehensive study which further disputes the theory that racial diversity, in and of itself, is correlated with positive educational outcomes.⁸³

In addition, in a compilation of analyses published under the title IMPACTS OF AFFIRMATIVE ACTION: POLICIES & CONSEQUENCES IN CALIFORNIA,⁸⁴ one is devoted to “Affirmative Action and Admission to the University of California.” It was authored by Professor Cecilia Conrad.

A proponent of retaining racial preferences, Professor Conrad nevertheless conceded:

Unfortunately, the hypothesis that diversity improves educational outcomes has not been subjected to much empirical study. . . Deppe finds that racial diversity did not contribute either positively or negatively to student value development. Deppe, *citing other studies, concludes that the racial integration of campuses has improved neither inter group contact nor racial attitudes.*⁸⁵

Educational Benefits from Diversity?

Professor Conrad’s research, like that of Drs. Astin and Chang, is not surprising. Nor is there any surprise in the research cited in the NAS *amicus* briefs or in more recent studies. All of it demonstrates what every thoughtful person intuitively understands: Racial diversity *in and of itself* has little or nothing to do, positively or negatively, with meaningful educational outcomes.

Paraphrasing Dr. Martin Luther King, Jr., who said it best (and Astin and Chang who confirm it), what matters most is the content of a student’s character, not the color of her skin.

Even though Bowen and Bok seem oblivious to this fact, students are not. In one of the most striking polls taken to date, a national survey of college students taken after THE SHAPE OF THE RIVER was published disclosed the following:

Four out of five college students say colleges should not use racial preferences in admissions decisions. Eighty-six percent say meeting academic standards is more important in admissions decisions than achieving racial diversity. Nearly ninety-six percent say *diversity of ideas* and high academic standards are more important to a quality education than achieving ethnic diversity. Over seventy-seven percent say schools should not give minority students preference in the admissions process. The responses opposing preferences cross *all* racial and political boundaries: whites 79.5 percent; Hispanics 71.4 percent; Asians 78.1 percent; blacks 46.7 percent; conservatives 82.3 percent; Moderates 81.1 percent; liberals 66.7 percent. And finally, almost 79 percent say lowering entrance requirements for some students, *regardless of the reason*, is unfair to the entire student body. (Whites, Hispanics, Asians and Others agree 4 to 1; African Americans agree 3 to 2.)⁸⁶

Getting Under the Skin of “Diversity”

From this survey, it seems quite clear that students on campus—unlike campus administrators—are overwhelmingly opposed to the use of racial preferences in admissions.⁸⁷

In the end, the educational outcome for any student trained by a faculty and surrounded by peers with strong character and high moral values, should not be an overly worrisome concern for America’s educators, including Bowen and Bok. And though it should not need repeating, intelligence, strong character, high moral values, and the ability to meaningfully contribute to the educational experience of one’s fellow students, have nothing to do with the color of one’s skin.

This is a principle which Bowen, too, once understood. While serving as the president of Princeton, he offered this to a group of the University’s students:

We have been proud to say that the opportunity to study at Princeton depends on an individual’s talent, character, determination, and personal qualities . . . This principle is related to a broader national goal—to the proposition that *in this country individuals should be able to move up the ladder of accomplishments as far as their energies and abilities will take them.*⁸⁸

Until writing in *THE SHAPE OF THE RIVER*, nowhere previously had Bowen—nor has he since—equated one’s skin color with one’s talent, character, determination, personal qualities, energy or ability.

MIGHT “COMMON PURPOSE” OUTWEIGH THE IMPORTANCE OF “DIVERSITY”?

Finally, because of the arguments by the University of Michigan and others, Americans too often have become hypnotized by the so-called value of “diversity.” When that occurs, we are at grave risk of losing sight of an arguably more important human outcome: the desire on the part of many of us to adopt a *common*,

Educational Benefits from Diversity?

rather than diverse, set of values (e.g. a common set of values which fully respects the right of each individual to be free from racial discrimination); and to be a part of a team with a *common purpose* rather than a diverse set of goals. In its simplest terms, it was captured by a black Texas A&M student who, after expressing agreement with President Gates’ decision not to use race as a factor in A&M’s admissions program, made this observation:

If you choose to come [to Texas A&M], it’s because you choose to be an Aggie, not because it’s a diverse campus . . .⁸⁹

A more poignant example might be taken from a recent national tragedy. It involved the loss on February 1, 2003 of the NASA Space Shuttle COLUMBIA (STS-107). COLUMBIA was manned by seven extraordinary individuals: Michael Anderson, David Brown, Kalpana Chawla, Laurel Clark, Rick Husband, Willie McCool, and Ilan Ramon. After their loss, many people felt compelled to comment on their “diversity” because they unquestionably were a racially and ethnically diverse group. Seven individuals, each different in millions of genetic ways; and diverse in other more obvious ways as well: among them, gender, religion, language and culture.

Yet it is arguable that we miss the mark when we focus on their “diversity” for it seems overwhelmed by what these extraordinary individuals shared in common: imagination, energy, intellect, strength, courage, and a willingness to place their respective lives on the line for their crew-mates and all humanity. Thus, in the most important ways they were not different at all. They were the same. And in that regard, is it not their *sameness* rather than their “diversity” which we should praise?

The great lesson these brave men and women of the COLUMBIA taught us is this: When we join hands in pursuit of a common goal with no attention paid to irrelevant factors of race and gender, we truly can soar to the Heavens. There were members of only one race aboard that starship. The *human* race. And they were among the best our race had to offer.

¹ Derek Bok, *BEYOND THE IVORY TOWER* (1982) at 63. Surely Bok does not believe that “good men” (or, for that matter, “bad men”) are determined by their skin color?

² TSR at 278.

³ TSR at 300.

⁴ *Regents of the University of California v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 2760-63, 57 L.Ed.2d 750 (1978).

⁵ *Grutter v. Bollinger, et al.*, 539 U.S. 306, 123 S.Ct. 2325, 2339-2340, 156 L.Ed.2d 304 (2003) (all references to *Grutter* in this chapter are taken from 123 S.Ct. 2325). It is here Justice O’Connor cites to Bowen and Bok and *THE SHAPE OF THE RIVER*. Compare Circuit Court Judge Danny Boggs’ thoughtful criticism of the “diversity” rationale. *Grutter v. Bollinger, et al.*, 288 F.3d 732, 788-793 (6th Cir. 2002)(Boggs, J., dissenting); and discussion in R. Lawrence Purdy, *Prelude: Bakke Revisited*, 7 TEX. REV. L. & POLITICS 313 (Spring 2003) at 345-354. In addition, among the more persuasive early critiques of Justice Powell’s “diversity” rationale is the law review article co-authored by Harvard Law Professor Alan Dershowitz shortly after the *Bakke* decision was issued. See, Alan Dershowitz & Laura Hanft, *Affirmative Action and the Harvard College Diversity-Discretion Model: Paradigm or Pretext?*, 1 CARDOZO L. REV. 379 (1979).

⁶ *Grutter, supra*, 123 S.Ct. at 2340.

⁷ *Id.* at 2352 and n. 3 (THOMAS, J., concurring in part and dissenting in part)(emphasis added).

⁸ After identifying several states which do not have a public, ABA-accredited law school, Justice Thomas observed (in a humorous, yet fully accurate, aside) that “Michigan has no compelling interest in having a law school at all, much less an *elite* one.” *Id.* at 2354.

⁹ *Id.* at 2353, n. 4 (emphasis added).

¹⁰ Justice Thomas cites two rationale, neither of which are consistent with the flimsy rationale adopted in *Grutter*. See, *id.* at 2351.

¹¹ Earlier in his dissent, Justice Thomas noted that a remarkably similar argument (that “a racially ‘diverse’ faculty would improve the education of all students”) was rejected by the Court in *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986). *Grutter, supra*, 123 S.Ct. at 2351.

¹² *Id.* at 2354.

¹³ Thomas Sowell, *THE VISION OF THE ANOINTED* (1995) at 95 (emphasis added).

¹⁴ See, Sarah Kleiner, “Texas A&M not using race in admission,” *THE DAILY TEXAN* (Dec. 5, 2003), citing a proposal to the University of Texas System

recommending a return to the use of race as a factor in admissions following *Grutter*.

¹⁵ *Bakke, supra* note 4, 98 S.Ct. at 2760-2763. “Diversity” today can include gender, age, marital or veteran status, and sexual orientation, among others, as components.

¹⁶ See, “Law School Diversity Study,” *The Gallup Organization, Inc.*, Project #127197 (March 1999). This survey was *Grutter* Trial Exhibit 178, produced by third-party intervenors’ witness Gary Orfield. Other work by Professor Orfield was referenced by Justice O’Connor in *Grutter*. See *Grutter, supra*, 123 S.Ct. at 2340. But Justice O’Connor did not refer to this study despite the fact that it was part of the trial record and contained clear statements from both Harvard and Michigan law students strongly rebutting the alleged educational value of diversity based simply on skin color. See Purdy, *supra* note 5 at 352-353.

¹⁷ *Grutter* Trial Exhibit 178 at GO 0021.

¹⁸ TSR at xxii, n. 2.

¹⁹ See, generally, *Grutter* Trial Exhibit 178, *supra* note 17.

²⁰ Richard O. Lempert, David L. Chambers & Terry K. Adams, *Michigan’s Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395 (2000).

²¹ University of Michigan Law School Professional Development Survey (1997) and discussion in Purdy, *supra* note 5 at 351-352.

²² *Id.*

²³ See *Grutter* Trial Testimony of Law School Professor Richard Lempert (Feb. 15, 2001), Trial Transcript Vol. 14, at 121-122.

²⁴ *Id.* at 126-129.

²⁵ Dershowitz & Hanft, *supra* note 5 at 408.

²⁶ *Id.*

²⁷ Caltech, which routinely reports approximately 1 percent or less black enrollment, was ranked No. 1 among the “Best National Universities” in both 1999 and 2000 by U.S. NEWS & WORLD REPORT, eclipsing all schools including Harvard, Yale and prestigious public universities such as Michigan and UC Berkeley.

²⁸ Bok, *supra* note 1 at 112 (emphasis added).

²⁹ As Thomas Sowell most recently observed, “diversity . . . has become a sacred mantra, endlessly repeated for years on end, without a speck of evidence being asked for or given to verify the wonderful benefits it is assumed to produce.” Thomas Sowell, “Diversity’s Oppressions,” *OpinionJournal* (from the Wall Street Journal Editorial Page, Oct. 30, 2006, WSJ.com)(last visited Oct. 30, 2006).

³⁰ For the fall of 1999, Rice University, an SEL-1 C&B school, reported the second highest percentage of URM enrollment among all the C&B schools (18.2 percent). *See*, “Undergraduate Profile, Ethnic Enrollment (Fall 1999),” www.ruf.rice.edu/~ricestatistics/. . . (7/18/00). Notably, Rice was also one of at least four C&B schools which, according to The Princeton Review’s THE BEST 331 COLLEGES – 2000 EDITION (at 401), expressly did *not* consider “minority status” in the admissions process.

³¹ The single exception among the C&B schools was Stanford University which reported total underrepresented minority enrollment in the fall of 1999 of 19%; lower than UCLA (at 22%) and just slightly higher than UT-Austin (at 18%). THE BEST 331 COLLEGES, *supra* note 30 at 460, 524, and 632. Of course, a large percentage of the less selective predominantly white colleges and universities have no trouble enrolling underrepresented minority students in vastly greater numbers than all of these “elite” schools. Does that mean that less selective, but more racially diverse, institutions provide better educational and learning environments – because of their increased racial diversity – than do the more highly selective, but less racially diverse, C&B schools?

³² *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 518 U.S. 1033 (1996).

³³ When the increased Asian American enrollments (which are a direct result of the elimination of “race preferences”) are added to the URM enrollment figures, the total minority enrollment in the fall of 1999 at both UCLA and UC-Berkeley approached 60%. *See* BEST 331 COLLEGES, *supra* note 30 at 516, 524.

³⁴ *Grutter, supra*, 123 S.Ct. at 2344.

³⁵ *Id.* at 2345.

³⁶ *Id.*

³⁷ *Grutter, supra*, 123 S.Ct. at 2359 (THOMAS, J., concurring in part and dissenting in part).

³⁸ *See, e.g., Grutter, supra*, 123 S.Ct. at 2344.

³⁹ As of July 1999, shortly after the publication of THE SHAPE OF THE RIVER, the U.S. Census was estimated to be 272,330,000 with 72.3% being white, 12.9% black, 0.9% American Indian, Eskimo and Aleut, 4.0% Asian and Pacific Islander, and 11.2% being Hispanic origin (of any race). Note: Percentages add up to more than 100% because Hispanics may be of any race and are therefore counted under more than one category. (www.infoplease.com/A0762156.html). *Also see* page 3 of “One America in the 21st Century,” The Advisory Board’s Report to the President. Since that date, the percentage of the U.S. population comprised of Hispanic

Americans reportedly has surpassed the percentage of blacks with a commensurate decrease in those who self-describe themselves as “white.”

⁴⁰ *See generally* notes 72 through 85 *infra* and accompanying text.

⁴¹ This is the racial mix reported by UC-Berkeley for all undergraduates for the Fall 1999. *See, e.g.*, “osr4.Berkeley.edu/public/STUDENT.DATA/PUBLICATIONS/UG/ugf99.” These numbers suggest that both whites and blacks are significantly underrepresented on Berkeley’s campus while Asians are dramatically overrepresented (by a factor of 10 to 1). Hispanics and Native Americans are essentially represented in accordance with their current presence in the national population.

⁴² TSR (paperback ed. 2000) at p. xxix (emphasis added).

⁴³ In addition to the C&B schools (Hamilton College, Kenyon College, Miami University (Ohio), Penn State, and Smith College – *see* PETERSON’S FOUR-HEAR COLLEGES (1996); The College Board’s COLLEGE HANDBOOK 2000 (1999); and various schools’ web pages which provide the ethnic breakdown for the classes entering in the fall of 1999), examples of other well-known highly selective institutions reporting black student enrollments in the 0% - 3% range include Bates College, Bowdoin College, Colby College, Boston University, Brandeis University, Carleton College, Grinnell College, University of Iowa, Notre Dame University, University of Wisconsin (Madison), University of Washington, Gonzaga University, Scripps College, Harvey Mudd College, and California Institute of Technology.

⁴⁴ THE BEST 331 COLLEGES, *supra* note 30 at 37.

⁴⁵ The College Board’s COLLEGE HANDBOOK 2000 (1999). *See* description provided for Denison University, Granville, Ohio.

⁴⁶ Denison’s 1994-1995 enrollment listed 4% African American, 2% Hispanic, 2% Asian American, 0% Native American. *See* PETERSON’S FOUR-YEAR COLLEGES (1996) at 862.

⁴⁷ *See* “Affirmative Action Plan,” DENISON UNIVERSITY CATALOGUE (1998-2000) (emphasis added) (www.denison.edu/affirm-act/plan).

⁴⁸ *Id.* (emphasis added).

⁴⁹ *Id.* (emphasis added).

⁵⁰ *Id.*

⁵¹ One set of programs available to Denison’s students and duplicated at many C&B schools, is the opportunity to not only participate in international study programs in Europe, Latin America, Asia, Africa, and the Middle East, but in domestic programs offering one- or two-semester in what is termed “the Black College Program” with historically black universities.

⁵² DENISON DIGEST – Spring 99 Edition (emphasis added).

⁵³ Does Denison suggest to applicants that, given its current (indeed, historical) lack of *racial* diversity, a graduate’s ability to function in a racially diverse society may be impaired by the educational experience at Denison? Was Bowen so impaired? While adhering to its stated goal of ensuring equal opportunity to every applicant regardless of race, one can safely assume that is *not* the message being delivered by Denison.

⁵⁴ See, e.g., The President’s Initiative on Race, ONE AMERICA IN THE 21ST CENTURY: FORGING A NEW FUTURE (1998) at 3, and Exhibits to the report.

⁵⁵ Not surprisingly, only eight of the 28 C&B schools list *any* Native Americans within their student bodies. See, generally, COLLEGE HANDBOOK 2000, *supra* note 45.

⁵⁶ *Id.* at 398.

⁵⁷ *Id.* at 232. “99%” of Morehouse College’s undergraduate enrollment in the spring of 1999 was described as “African-American.”

⁵⁸ *Id.* at 391. A total of 4 percent of Hope’s student body was listed as being members of various minority groups.

⁵⁹ See Deposition Testimony John Hope Franklin (Sept. 25, 2000) at 66-67.

⁶⁰ See, Lisa Ellen Wolf, MODELS OF EXCELLENCE: THE BACCALAUREATE ORIGINS OF SUCCESSFUL EUROPEAN AMERICAN WOMEN, AFRICAN AMERICAN WOMEN, AND LATINAS (1995), Ph.D. dissertation submitted to the Faculty of the Claremont Graduate School, at 144.

⁶¹ The majority of the 19 HBCUs which reportedly participated in the MMUF program reported student bodies in the 1998-99 academic year being comprised of 96 to 100% African American students. See, generally, COLLEGE HANDBOOK 2000, *supra* note 45.

⁶² *Id.* at 180.

⁶³ *Id.* at 1037.

⁶⁴ *Id.* at 670.

⁶⁵ Penny Edgert, “Assessing Campus Climate: Implications for Diversity,” Studying Diversity in Higher Education (Daryl G. Smith, *et al.*, eds.), NEW DIRECTIONS FOR INSTITUTIONAL RESEARCH (No. 81, Spring 1994) at 55-56.

⁶⁶ Bok, *supra* note 1 at 112.

⁶⁷ Clark, Anna, “Activist blasts race-based public policy,” MICHIGANDAILY.COM (Apr. 14, 2000).

⁶⁸ COLLEGE HANDBOOK 2000, *supra* note 45 at 513.

⁶⁹ Remarks by President William Jefferson Clinton, 126th Carleton College Commencement Exercises (Jun. 10, 2000), White House Press Office.

⁷⁰ For the year when Clinton’s staff member presumably entered Carleton College as a freshman (1981), Carleton reported that approximately 8% of its student body was comprised of “Third World Students (Black, Latino,

Hispanic, Asian and Native American).” See CARLETON COLLEGE CATALOG (1981-82) at 6. The 8% included Asians who are not, of course, an underrepresented minority.

⁷¹ TSR at 228.

⁷² Alexander W. Astin, WHAT MATTERS IN COLLEGE? FOUR CRITICAL YEARS REVISITED (1997) at 363.

⁷³ Patricia Gurin is a professor of Psychology and Women’s Studies at the University of Michigan who was retained by the Law School as an expert witness. It was Professor Gurin’s study upon which the University principally relied in defense of its claim that “diversity” is a compelling interest justifying the use of race preferences in college and university admissions. Her work was apparently a less-than-accurate account of the so-called benefits of “diversity” as evidenced by the contradictory conclusions reached in an earlier study about which Dr. Gurin’s husband, Gerald Gurin, was specifically aware. See Robert Lerner & Althea K. Nagai, “Diversity Distorted: How the University of Michigan Ignored Inconvenient Data in Order to Sell ‘Diversity’ to the Courts and the Public” (May 27, 2003) citing a report, later “cleansed” by the University of Michigan, entitled “Executive Summary: The Michigan Study Project, Office of Academic Multicultural Initiatives” (May 24, 1994). Gurin ultimately was withdrawn by the Law School as a witness in the *Grutter* trial. Notwithstanding the alleged deficiencies of her work, references to it were included in the opinion of one of the Sixth Circuit judges who joined in reversing the trial court’s decision (the trial court having earlier ruled that “diversity” was *not* a compelling interest sufficient to justify the Law School’s use of race in admissions). See, discussion of Circuit Judge Eric L. Clay’s opinion in *Grutter v. Bollinger, et al.*, 288 F.3d 732, 759-762 (6th Cir. 2002), found in Purdy, *supra* note 5 at 342 and accompanying n. 144. Perhaps the best analysis demonstrating the deficiencies of Gurin’s study is found in the *amicus* brief filed by the National Association of Scholars in *Gratz*. See BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF SCHOLARS IN SUPPORT OF PETITIONERS in *Gratz, et al. v. Bollinger, et al.* (In the Supreme Court of the United States)(Jan. 2003).

⁷⁴ Peter Schmidt, *Debating the Benefits of Affirmative Action*, THE CHRONICLE OF HIGHER EDUCATION (May 18, 2001).

⁷⁵ *Grutter, supra*, 123 S.Ct. at 2340.

⁷⁶ J. Mitchell Chang, “Racial Diversity in Higher Education: Does a Racially Mixed Student Population Affect Educational Outcomes?” (1996). This was Dr. Chang’s Ph.D. dissertation submitted in partial satisfaction of

UCLA’s requirements for the degree of Doctor of Philosophy in Education (Ann Arbor, UMI No. 9626812).

⁷⁷ *Id.* at 55.

⁷⁸ *Id.* at 127-29 (emphasis added).

⁷⁹ *Id.* at 104-05.

⁸⁰ *Id.* at 128, 130. Self-segregation is a common complaint heard from students at many large and arguably “diverse” universities, including the University of Michigan: “Ethnic diversity at U of M is strong . . . [b]ut student interaction is not so hot at this large university.” THE BEST 331 COLLEGES, *supra* note 30 at 574.

⁸¹ See BRIEFS FOR AMICUS CURIAE NATIONAL ASSOCIATION OF SCHOLARS, in *Grutter and Gratz* (both dated Jan. 2003).

⁸² BRIEF FOR AMICUS CURIAE NATIONAL ASSOCIATION OF SCHOLARS in *Board of Education of the Township of Piscataway v. Taxman* (In the Supreme Court of the United States, October Term 1997, No. 96-679).

⁸³ Thomas E. Wood & Malcolm J. Sherman, RACE AND HIGHER EDUCATION: WHY JUSTICE POWELL’S DIVERSITY RATIONALE FOR RACIAL PREFERENCES IN HIGHER EDUCATION MUST BE REJECTED (May 2001); Thomas E. Wood & Malcolm J. Sherman, SUPPLEMENT TO RACE AND HIGHER EDUCATION: WHY JUSTICE POWELL’S DIVERSITY RATIONALE FOR RACIAL PREFERENCES IN HIGHER EDUCATION MUST BE REJECTED (Jan. 2003). *Also see* Robert Lerner & Althea K. Nagai, A CRITIQUE OF THE EXPERT REPORT OF PATRICIA GURIN IN *GRATZ v. BOLLINGER* (2001), prepared for The Center for Equal Opportunity; Sanley Rothman, Seymour Martin Lipset & Neil Nevitte, *Racial Diversity Reconsidered*, THE PUBLIC INTEREST (Spring 2003); and Stanley Rothman, Martin Lipset & Neil Nevitte, *Does Enrollment Diversity Improve University Education*, 15 INT’L J. PUB. OPINION RESEARCH 8 (2003).

⁸⁴ Paul Ong (ed.), IMPACTS OF AFFIRMATIVE ACTION: POLICIES & CONSEQUENCES IN CALIFORNIA (1999).

⁸⁵ *Id.* at 184, citing Marilyn J. Deppe, “The Impact of Racial Diversity and Involvement on College Students,” Paper presented at the annual meeting of the Association of Higher Learning for the Study of Higher Education, Atlanta, GA (Nov. 2-5, 1989)(emphasis added).

⁸⁶ Zogby International, “Report on Academic Life Survey” (April 7, 2000). This and other surveys confirming that most Americans, including majorities of blacks and Hispanics, oppose racial preferences, are cited in the BRIEF FOR AMICUS CURIAE NATIONAL ASSOCIATION OF SCHOLARS in *Grutter* (Jan. 2003) at 7-11.

⁸⁷ *Id.* at 7.

⁸⁸ William G. Bowen, EVER THE TEACHER (1987) at 456 (emphasis added).

⁸⁹ Kleiner, *supra* note 14.