

**B417. "'Diversity' Argument Fails the Smile Test" The National Law Journal (April 7, 2003) p. A19.**

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On April Fools' Day, the U.S. Supreme Court heard arguments as to whether it is acceptable for the University of Michigan to specifically deny admission to some fully qualified white students in order for those whites who are admitted to enjoy a "diverse educational environment." The case has been brought against the university by a student who was denied admission while some African-American and Hispanic students with substantially lower grade-point averages and standardized test scores were admitted. Numerous liberal and civil rights groups have filed amicus briefs on behalf of the University of Michigan.

Michigan's policy reflects the effects of the Bakke case, according to which race cannot be a deciding factor in admissions. Michigan is not denying that it grants 20 admission points to African-Americans and Hispanics-compared to only one point for an outstanding essay.

However, instead of resting its case on the social justice of including race and ethnicity among its admissions considerations, Michigan believes that it has found a more politically savvy argument: that by denying admissions to some white students, it is doing a favor to those white students who do get in, by ensuring a diverse educational environment including large numbers of minority students.

Lee Bollinger, the former president of University of Michigan, stated that the basic idea of the admissions practice "is that students learn better when they are in an environment in which not everyone is just like them." Michigan's deputy general counsel Liz Barry has elaborated that race "matters because we know when we bring together a diverse student body, we get educational benefits."

This new argument assumes that it is ethically appropriate to deny some fully qualified students admission in order to somewhat enrich the environment for white students. (African-American students do not gain diversity from admitting more African-American students.)

#### Reality check

Michigan's argument does not pass the smile test: It is not something you can argue with a straight face. True, diversity does add something to an educational environment; however, it comes in many stripes. It would do wonders for the freshmen of our elite universities to have among them more poor whites from Appalachia, a few more diehard Christians and maybe a few more students from Muslim nations such as Iran and Kyrgyzstan.

Indeed, research conducted by Stanley Rothman, professor emeritus at Smith College, indicated that the benefits of diversity in higher education are questionable at best, with diversity resulting in increased dissatisfaction with the quality of education and increased complaints by students about discrimination.

The weakest link in Michigan's case is proffered by its law school dean, Jeffrey Lehman: "When we teach our students about difficult issues such as whether it's appropriate for police to be able to use race [sic] profiles, when we ask our students whether it's appropriate to decriminalize crack cocaine, the discussion, the analysis, the learning that takes place is better in a racially diverse classroom."

The implication of Lehman's statement is that a white person cannot make a powerful case against racial profiling-or a black student for it. If this argument is upheld, the law school

would need gay students for a discussion of civil unions, mental patients to examine involuntary commitment laws, and so on-a truly nutty idea. Moreover, some of the most strident voices for social justice are lily-white.

Michigan and company would do best if they stuck to "old" arguments. Some social groups suffered-and are still suffering-from gross injustices.

Given that colleges provide admissions points for other so-called nonmeritorious considerations (Michigan gives four points to children of alumni and 20 points to athletes), it seems Michigan could easily rest its case on granting similar or larger numbers of points to correct injustice.

Given that race and ethnicity in such a scoring system are not the determining factors, the court may well let this kind of scoring stand. After all, there are educational gains, both for the students and for the rest of us, if arguments that are advanced are candid and compelling.

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