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**FYI**

UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

FAX TRANSMITTAL

TO Terry Edmonds

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FAX 456-5709FROM LESLIE T. THORNTON, CHIEF OF STAFFPHONE 202-401-3000FAX 202-401-2098PAGE(S) TO FOLLOW 7MESSAGE: This is extremely important!!**CONFIDENTIALITY NOTICE**

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 12, 1997

NOTE TO SYLVIA MATTHEWS

FROM:  LESLIE T. THORNTON

SUBJECT: RACIAL RECONCILIATION INITIATIVE/SAN DIEGO ISSUES

I have attached to this note a copy of an article I assume you have seen on the issue of UCSD provost Cecil Lytle's resignation after the university chancellor agreed with a faculty vote rejecting Lytle's charter school initiative. Lytle's plan would have created an on-campus charter high school for disadvantaged students. I am told the issue has caused significant controversy there. I have also attached a copy of an op-ed on race that is running in the San Diego Union Tribune. It was written by Roy Brooks, the only African-American law professor at the University of San Diego School of Law, and sets out the outline for a three-prong attack on Prop 209 being initiated by the NAACP chapter in California. Brooks is apparently being looked to by newspapers there for background, quotes, etc., on the issue at UCSD specifically and race issues generally.

Please call me if you have questions about this.

cc: Erskine Bowles

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C. 20202

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THE SAN DIEGO UNION-TRIBUNE WEDNESDAY, JUNE 11, 1997

UCSD provost resigns post over denial of charter school

By Jeff Ristino
STAFF WRITER

The provost of UC San Diego's Thurgood Marshall College, Cecil W. Lytle, resigned suddenly last night, hours after university chancellor Robert C. Dynes accepted a faculty vote rejecting Lytle's dream for an on-campus charter high school.

Although Dynes called yesterday for "fresh ideas" to get the university involved in college-prep education for disadvantaged young people, Lytle said the university's response to the charter initiative was "gutless and unimaginative."

In its discussion of the proposal, Lytle said, "The campus has not seized the opportunity ... to think seriously about how we can participate with the community. Instead



Robert C. Dynes:
Chancellor says,
"I want a school
of some form."



Cecil W. Lytle:
Provost calls
response to
school initiative
"gutless."

we're looking for ways out."

Lytle disclosed his decision to resign as provost after consultation with colleagues who had worked with him on the charter proposal.

He said it will be effective "immediately," but he will remain at UCSD as a professor of music.

Lytle has been head of the college, which offers a broad, liberal arts education and was formerly known as Third College, for nine years.

The resignation reflects "a re-evaluation of my effectiveness and the degree to which I'm in sync with faculty desires," Lytle said as he prepared a letter for delivery to Dynes this morning.

Lytle's stunning and unexpected decision is certain to overshadow Dynes' attempt to carry the momentum behind the charter proposal into a different kind of effort to

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Provost

The charter proposal drew mixed reaction

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serve the community's disadvantaged young people.

"I want a school of some form," Dynes said after his announcement to elected representatives of the faculty's Academic Senate. "I believe it's our responsibility."

And the chancellor said the initiative should be developed over the summer and put up for a vote by November, a schedule that contrasts sharply with the more than three years of work that went into the charter high school proposal.

"UCSD High" was dealt a fatal blow Wednesday by a 362-293 faculty ballot recommending that the charter school not be pursued. Dynes promised last week to give the matter serious consideration before deciding for himself what to do with the idea.

"I accept that verdict and want to state unequivocally that I will not move forward with this proposed plan," he said yesterday, reading prepared remarks to the faculty representatives in their final meeting of the academic year. "Discussion of this proposed charter school plan is over."

Visibly angry, Lytle walked out of the 3:30 p.m. meeting a few minutes after Dynes finished his remarks. He said he was going home to think things over.

By 7 p.m., he had decided to quit.

"It's a very difficult decision," he said. "I've spent my life with this campus, 25 years almost. I care very much about the campus and certainly about the aspirations and ambitions of Thurgood Marshall College."

Dynes was not immediately available for comment.

Lytle didn't single out anyone for criticism. Instead, he said the outcome of discussion on the proposed charter was "gutless and unimaginative" on the part of UCSD.

"If there's anything that this campus is capable of, it's a great imagination, enormous amount of energy and forethought," he added. "The response here has not been that."

Lytle said it is important to see the charter proposal in the context of the UC Board of Regents' 1995

vote to end affirmative action in undergraduate admissions, effective next spring.

"I just do not see the campus leadership responding in a way that is commensurate with the challenge," he said. "I see no change."

Supporters of the charter proposal characterized it as a bold move in education reform that could have served as a model for all public schools.

The proposal called for the high school to take its 9th through 12th graders from a level Lytle called "just below excellent," trying to lift their academic prowess to UC admissions standards. The school would have targeted disadvantaged but promising students from inner-city neighborhoods.

But critics said the enormous resources required to support the

school's 240 students would be much better spent in other forms of outreach, an umbrella term for programs designed to enrich education in kindergarten through the 12th grade and to help recruit students to the rigorous UC system.

Despite the faculty vote on the charter concept, Dynes said he sensed "a remarkable consensus about its general goals."

"I'm going to ask you, as I've committed myself, to reignite this commitment and join me in seeking fresh ideas for a UCSD initiative in preparatory public education," he told the faculty. "I have no prejudices or preconceptions about the form this initiative would take."

It might be a school, an "academy," or a partnership with some other institution, he said. It might be on campus or off, he said.

Dynes said the new proposal would not replace any of UCSD's existing outreach programs but would rather become the "flagship" for those efforts.

Dynes announced a joint faculty-administration committee to pursue ideas over the summer. It will be headed by Georgios Anagnostopoulos, who just completed his term as chairman of the Faculty Senate's representative assembly, and Darrell D. Fahestil, the new chairman. Fahestil, a professor in the department of medicine, was one of four professors who signed the faculty ballot argument against the charter school proposal.

Whatever new proposal emerges next fall, Dynes said in an interview, it should be something that is "visibly a goal to be sought" by pre-college young people.



University of San Diego

Roy L. Brooks
Warren Distinguished Professor of Law
School of Law

11 June 1997

Leslie T. Thornton, Chief of Staff
U.S. Department of Education
600 Independence Avenue, S.W. (Rm. 6153)
Washington, D.C. 20202

VIA FAX: 202-401-2098

Dear Leslie:

Enclosed are the op-ed article and newspaper article of which we spoke earlier.

The main point of the op-ed article is that the gloomy statistics — namely, the decline in African American and Latino admissions at elite public law schools, the failure of less selective law schools (including private law schools) within the state to pick up the slack, and the decline in African American and Latino college applicants in anti-affirmative action states — should not be taken by the Prop. 209 opponents as reason to say "I told you so." Rather, the statistics should be viewed as an opportunity for the entire nation to focus its attention on the value choices that are key to resolving the affirmative action question and improving race relations in general: integration and racial opportunity v. resegregation (educational apartheid) and rigid colorblindness. What good is colorblindness in a segregated world?

The article will set the stage for a three-prong attack on Prop. 209 by the NAACP chapters in California: (1) new legislation similar to the Texas bill; (2) reversal of the Wilson appellate decision upholding Prop. 209; and (3) a new voters' initiative overturning Prop. 209 by state constitutional amendment if Wilson is upheld.

I hope this helps. Please let me know if I can be of further assistance.

Sincerely,

Roy L. Brooks

rlb/rms
Attachments

A QUESTION OF VALUES

Roy L. Brooks

Warren Distinguished Professor of Law
University of San Diego School of Law

On Saturday, President Clinton will come to UCSD to deliver what is being billed as a major speech on race relations in higher education. Coming in the wake of Prop 209 and other anti-affirmative action measures here and in Texas, the president's address may help reshape the national debate on the use of racial preferences in higher education. The carnage we are seeing in African American and Latino admissions affords the president an opportunity to focus the nation's attention on the values that are key to resolving the affirmative action question.

In the aftermath of Prop 209 and SP-1, the UC Board of Regents' resolution that abolished racial preferences in admissions, African American and Latino admissions are down 81% and 50%, respectively, at Berkeley's Boalt Hall Law School; 80% and 32%, respectively, at UCLA Law School; and 26% and 28%, respectively, at UC Davis Law School. Similar results are being reported in several southern states, e.g., Texas, where racial preferences were proscribed by a federal judicial decree in the Hopwood case.

The supporters of Prop 209 and SP-1 told us that there would be a decline in minority admissions at the top public schools (although not to this extent) but also predicted that these students would not be lost because racial preferences simply reallocate minority students among schools. African American and Latino applicants "would lower their expectations and apply to and attend less selective schools if there were no affirmative action admission practices." This is absolutely not happening.

Less selective schools are not picking up the slack. They are not increasing their acceptances of African American and Latino applicants, including those denied admissions to the UC schools. Even private schools, such as USD Law School, which are free from the constraints of Prop 209 and SP-1 are admitting less African American and Latino students today than they did two or more years ago. The Hopwood case is causing some deans, fearful of inviting litigation, to take passive stances even though Hopwood is a 5th circuit case (California is in the 9th circuit) and is only applicable to public institutions.

More alarming than the overall decline in African American and Latino admissions, the percentages of African American and Latino college applicants in anti-affirmative action states are substantially down. The U.S. Department of Education reports that the anti-affirmative action reputation of California and Texas has had a "dramatic, negative effect" on the prospects of African American and Latino students. Promising minority students are

unwilling to waste their time and limited funds applying to schools that have withdrawn the welcome mat. Those accepted are driven away by the knowledge that racial isolation cultivates academic failure.

These statistics help to focus our discussion of affirmative action. They bring a clarity to the table that was absent prior to the conceptualization and implementation of Prop 209, SF-1, and the Hopwood decree. Until now, proponents and opponents of affirmative action could only speculate about what higher education without affirmative action would look like. Having a better view of that world now, we can clearly see that the real issue comes down to a question of values.

If we value racial integration, or diversity, and racial opportunity in higher education, particularly at our elite public schools, we must then value affirmative action in the form of racial preferences, but not necessarily racial quotas. It is no longer credible to argue that the demise of affirmative action will not have a chilling effect on the higher education prospects of African American and Latino students. The numbers are too clear to be denied.

Nor should we fail to understand what is at stake. It would significantly change the character of our society--indeed, the sense of what it means to be an American--if promising African Americans and Latinos students were, in effect, granted limited access to the UC schools or, worse, discouraged from advancing their education beyond high school. Such a dual educational system--one vanilla, the other chocolate--is too close in appearance and morality to the segregated educational system that Brown v. Board of Education invalidated nearly a half-century ago. Brown at heart was less about simplistic colorblindness than about racial integration and educational opportunity.

But isn't the meritocracy value superior to the diversity and racial opportunity values in our society? This question is based upon the false assumption that the vast majority of affirmative action admittees are not as qualified as white admittees. This assumption is erroneous because it is primarily predicated on a predictive variable (standardized test scores) rather than on the actual performance of the students. In law schools, for example, although the typical affirmative action student is admitted with lower LSAT scores than his classmates, the former usually graduates near the middle of his class. This means that the affirmative action law student performs better than approximately half of the students who were deemed to be more "qualified" than him based on the LSAT. One recent study involving applicants to 173 law schools reports that a race-blind admissions policy "would deny a legal education to many minority applicants who were fully capable of the rigors of legal education and of entering the legal profession."

The assumption of "underqualification" is also belied by the actual performance of affirmative action beneficiaries in the legal

profession. Graduates from the 1970s and 1980s have outpaced their standardized test scores. For example, a report on affirmative action students who graduated from the University of Michigan Law School, one of the elite law schools in the country, shows them to be successful lawyers, federal judges, and law professors. We cannot turn a blind eye to these facts when trying to make an honest assessment of competing values.

It would be nice if we could close the racial differential in standardized test scores through better education. After some thirty years of effort, we have not been able to do this to the point of obviating the need for racial preferences. No one has even come close to suggesting that success is just around the corner, and, given the post-graduate performance of affirmative action beneficiaries, I am not sure it is all that important.

Some would argue that the nondiscrimination value--the belief that discrimination is intrinsically wrong--trumps the racial integration and racial opportunity values. This argument ignores the fact that the nondiscrimination value, as originally fashioned in the civil rights movement, was intended to advance integration and racial opportunity, and was never supposed to further resegregation. The argument also fails to deal with the fact that the nondiscrimination value is selectively observed in higher education and elsewhere even after Prop 209. Preferences still exist for veterans, the disabled, legacies, and those with connections to powerful insiders, such as UC regents and elected officials. Given what is at stake--namely, educational apartheid--can we afford to value nondiscrimination over all other values?

Prop 209 and SP-1 would permit the California legislature to enact a bill that requires the UC schools to accept the top 10% of graduates from all state high schools. Although this would increase African American and Latino admissions at the undergraduate level, it would have no impact on post-graduate admissions, where the problem appears to be most acute.

Try as we might, we cannot escape the clash of values that affirmative action brings to the table.