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Postsecondary Education Descriptive Analysis Reports

Access to Postsecondary Education for the 1992 High School Graduates

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HIGHLIGHTS

This report uses data from the National Education Longitudinal Study of 1988 (NELS:88) to examine access to postsecondary education of 1992 high school graduates by 1994, two years after high school graduation. After an overview of the postsecondary enrollment rates of the 1992 high school graduates by family income, race–ethnicity, and parental levels of education, the report focuses on the factors associated with the relatively low four-year college enrollment rates of Hispanic, black, and low-income high school graduates. It examines college costs and financial aid, the educational expectations and immediate college plans of the high school graduates, and their academic preparation as measured by a four-year "college qualification index" developed for this study. The index is used to identify those who would have met the minimum requirements to be admitted to a four-year college, the group of high school graduates who are considered to be "college-qualified." The major findings are:

- Although there are differences by income and race–ethnicity in the four-year college enrollment rates of college-qualified high school graduates, the differences between college-qualified low-income and middle-income students, as well as the differences among college-qualified black, Hispanic, Asian, and white students, are eliminated among those students who have taken the college entrance examinations and completed an application for admission, the two steps necessary to attend a four-year college.
- High school graduates whose parents have low levels of income and education are able to attend four-year colleges at the same rates as students from middle-income families, if they do what four-year colleges expect them to do. That is, if low-income students have an academic record and aptitude test scores which demonstrate even the minimal qualifications for admission to a four-year institution, if they take a college entrance examination, and if they submit an application for admission, the majority of low-income students enroll in postsecondary education, and over 83 percent attend a four-year college or university.
- College-qualified low-income students who have been accepted for admission to public four-year colleges and universities and those who have been accepted to private four-year colleges and universities are just as likely to enroll in them as are middle- and high-income students. There is no measurable difference by family income in the proportion of those accepted at private institutions who choose to enroll in a public four-year institution instead. There are also no differences in the enrollment rates of those college-qualified blacks, Hispanics, Asians, or whites who have been accepted for admission to either public or private four-year colleges and universities.

- Low-income, black, and Hispanic high school graduates are less likely to be well prepared academically to attend a four-year college. Even among those who are college-qualified, low-income and Hispanic (but not black) students are less likely to take the college entrance examinations and apply for admission to a four-year institution.
- Among all college-qualified seniors who enrolled in postsecondary education, Hispanics were less likely than any other racial–ethnic group to attend a four-year institution. Instead, college-qualified Hispanics were more likely than any other racial–ethnic group to attend a public two-year institution. College-qualified Hispanics were also less likely to take college entrance examinations and submit an application for admission to a four-year institution compared with Asian, white, and black college-qualified students.
- Three-quarters of all 1992 high school graduates enrolled in some type of postsecondary institution by 1994. Almost half (45 percent) enrolled in a four-year institution, one-quarter (26 percent) enrolled in a public two-year college, and 4 percent enrolled in other institutions offering less than four-year programs.
- The proportion of all students who enrolled in postsecondary education within two years of high school graduation was directly related to family income: 64 percent of low-income, 79 percent of middle-income, and 93 percent of high-income students attended postsecondary education by 1994.
- About 80 percent of the low-income high school graduates who enrolled in postsecondary institutions received financial aid. Their average educational expenses after financial aid ranged from about $4,900 at public two- and four-year institutions to $5,700 at private, not-for-profit, four-year institutions. To help meet these costs, two-thirds of the low-income students worked while enrolled, for an average of 24 hours a week.
- When the 1992 high school graduates were in the eighth grade, 59 percent of low-income, 76 percent of middle-income, and 92 percent of high-income students said that they expected to finish college. There was no substantial change in these expectations by family income or race–ethnicity when they were seniors in 1992.
- Nearly 80 percent of the 1992 high school graduates said that they expected to attend postsecondary education immediately after high school. In October 1992, 65 percent were actually enrolled. By 1994, 75 percent had been enrolled. Among those students who had planned to attend immediately after high school, 89 percent had enrolled by 1994.

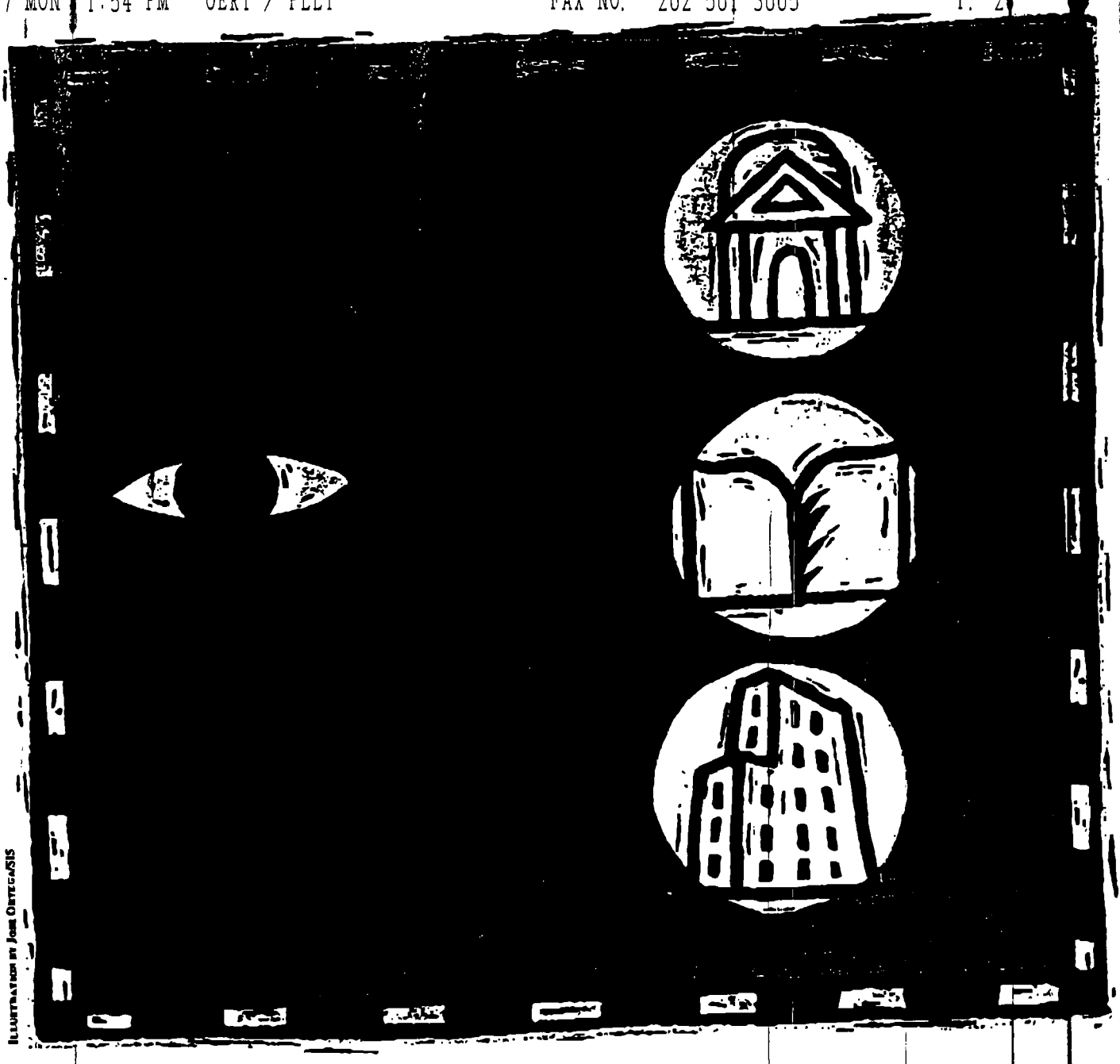

ILLUSTRATION BY JOSE ORTEGA/SIS

DIVERS

Walk the Walk, and Drop the Talk

BY CLIFFORD ADELMAN

Like most knowledge workers who straddle the ages of pap an gigabytes, I find a periodic cleaning of both kinds of files ce sary. One recent afternoon, then, while the computer upl ed files to a mainframe, I turned to the cabinets in the office. In a drawe an opened was a folder labeled "diversity issues." I started l afing thro h documents—a case study on accountability for minority tudent su ss Richard Richardson's "equity score" formulas for judgin minority enro ment, a detailed plan by a community college in a mino y district to pre pare students for assessments in proficiency-based comp ter applic ion an analysis of campus climate for minority students in a tate with a ow percentage of minorities, the University of Texas-El Pas 's pre-col e panic Mother-Daughter Program—wait a minute! This tuff was pr ty good, directed at meaningful equity, and refreshing to re d. The wo "d versity" appeared rarely but with a warm resonance. The date stam on these documents ranged from 1986 to 1990. I moved the n to a set ma zine boxes labeled, "Equity Issues: Minority Students." That's a la l I derstand. But I don't understand "diversity" anymore.

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ITY

Somehow, in an awfully short time, we have pounded and bleached the word diversity into nothingness. How did we do it?

The answer to that question marks the beginning of a difficult journey. At the end of this journey, I hope you will seriously consider the proposition that the rhetoric of diversity (and all the time we spend on it) is avoidance behavior, that it hides the realities of inequities in education and helps us evade the hard work necessary to overcome those inequities. I also hope you will seriously consider some propositions for more hard work on behalf of equity.

1. "Diversity" and the Net of Language

Both philosophers and students of political rhetoric and propaganda have contributed much to our understanding of the ways in which language creates, reflects, and masks reality. Some have also demonstrated, very powerfully, how public and organizational policies stand or fall on words.

"Diversity" is a critical case in point. A comparative content analysis of a random week's worth of major newspapers (let alone issues of *Change*) from the years 1996 and 1986 will quickly demonstrate how central and common the term has become in contemporary discourse. Its currency has risen faster than the stock market. The analogy is not chosen lightly: at current levels of valuation, our use of the term is both overextended and indiscriminate. The less clear the term becomes, the more it is read, cynically, as a euphemism. The more cynicism, the less likely policy grounded in the term will be effective.

"Just try to get through the day," columnist Russell Baker wrote last April in *The New York Times*, "without reading or hearing about...someone who is championing diversity." As my colleague Jacqueline Woods, the Education Department's liaison to community colleges, wisely notes, "in 1997, when you use the word 'diversity,' you end the conversation." (See Resources.)

To help matters, some have suggested that "diversity" never be used in ordinary language as a stand-alone noun. Always qualify the term, for example, "racial/ethnic diversity." The problem with qualifiers, though, is that some (such as "racial/ethnic") are clear reflections of reality, while others (such as "cultural") are foggy.

And if we add other observable and non-observable population characteristics (national origin, gender, age, social class, income level, marital status, parental status, sexual orientation, religion, geographic origin, politics, language dominance, physic[illegible]aracteristics, disabilities, and so on) as q[illegible]iers, then the fog spreads far indeed. I[illegible]ry difficult to formulate public policy, [illegible]tives for organizational behavior, or g[illegible]nes for personal behavior in fog.

When "shoulds" and "oughts[illegible]dded to ordinary discourse, the clarity o[illegible]rms becomes more important as they [illegible] the worlds of ethics and law. For ex[illegible] if we use the term diversity as an hon[illegible]abel, apply it to populations we defin[illegible]bserv-able visual characteristics, and t[illegible]ple or institutions how they "should" b[illegible] with respect to those populations, we [illegible] that this honorific universe *excludes* [illegible]ations whose characteristics are not os[illegible]y visual—for example, religious mino[illegible]or single parents. When we set this ap[illegible]on in policy, we invite legal challeng[illegible]

Think, though, for a moment[illegible]o the "we" is here. The people who d[illegible]diversity," set the "diversity agenda," [illegible]ate the "diversity policies," and run the [illegible]rsity conferences" are usually those [illegible]majority who see others as different. The[illegible]rs," who rarely have a say in the def[illegible]n and use of the term, are swept along[illegible]e momentum of what sociolinguists [illegible]'supra-dialect," a politically dominant [illegible]age.

2. "Diversity" in High[illegible] Education: A Multipl[illegible]fe

As one might expect, the ter[illegible]ersity has had a full life in the world o[illegible]igher education. But the different applica[illegible]of the term—to institutions, environm[illegible]instruction, curriculum, and people—[illegible] alway[illegible] in harmony. Furthermore, they [illegible]exist in an uneasy tension with the lang[illegible]and ideals of equity. Let us see how th[illegible]appens.

Diversity of Institutions, En[illegible]ments, and Learning. By "diversity of [illegible]tions," w[illegible] refer to ostensible (size, location) [illegible]havioral (highest degree, level of research[illegible]y), taxonomic (Carnegie class), control ([illegible]li[illegible] private for-profit) and imputed (mission) [illegible]aracteristic[illegible] Missions, in turn, can be populat[illegible]driven (hi[illegible]torically black colleges and univer[illegible]s HBCUs[illegible] women's colleges), sponsorship-[illegible]ve[illegible] (religious, military), or curricular (m[illegible]g, technolo[illegible]gy, fine arts). Our pride in this ty[illegible]of diversity is intense and very public.

A subtext of this diverse ins[illegible]tional framework involves diversity [illegible]n environments, that is, the opportunity [illegible]al kinds o[illegible] cultural, political, and social o[illegible]nizations t[illegible] develop and express themselv[illegible]vi[illegible]in insti[illegible]tutions. Students (and faculty) [illegible]oose expre[illegible]ssion just as they choose institu[illegible]ns. Of

course, campuses differ hugely in what they have to offer here: the larger and more residential the institution, the greater the opportunity for this genre of diversity. The scent of inequity begins to emerge because some students thus have far more opportunity to experience this "diversity" than others.

Within the vast universe of choice in U.S. higher education, our language also places high value on what one might call "diversities of learning." Lectures, discussions, labs, computer-assisted instruction, telecourses, group independent study, service learning, student research participation, simulations on the Web—we want it all and we value individuals who learn in different ways! It's another honorific flag.

But it is obvious that not even the majority of institutions can offer this diverse mix of instructional methodologies that allows students to find their own best combinations for learning. Wealthy institutions can do it. Large institutions can do it. But that is a limited group. The scent of institutional inequities grows stronger.

Diversity of Curriculum. We are also proud of our diversity of curriculum. Our system offers everything. And our normative statements (the "shoulds" and "oughts") indicate that we want students to study or demonstrate competence in everything: mathematics, science, history, literature, writing, computer skills, and so on.

But it is obvious that the vast majority of students have neither the time nor the money to study everything. Students attending community colleges, in the main, have very focused and limited objectives, for example, an associate's degree in nursing or a certificate in computer programming. With respect to public four-year colleges, state legislatures no longer have the patience to underwrite six-year degrees with 160-plus credits so that students can experience, on public time, the infinite manifestations of knowledge. What is true for state legislatures holds for families with enough Stafford and PLUS loans already.

Given the diversity of student objectives, when we add curricular requirements, such as those for "diversities of [cultural] perspective," we run into inequities in ability to pay. Even when these requirements are substitutes and not add-ons, students who seek degrees in fields requiring licensure or certification (education, engineering, accounting, nursing, and others) will still take the courses required to prepare them for these occupations, and will wind up with considerably more than 120 to 130 credits.

For these students, we have ratcheted up graduation requirements; if they come from families of limited means, they are thus subject to more inequity. When students of color are affected, this clash of "diversity" and equity becomes an unhappy paradox.

Diversity of People and the Diversity Co-curriculum. Lastly, higher education values the diversity of people attending (and teaching at) its institutions. We value students with a "diversity of talents and interests" (athletics, music, theater, journalism, service). We value students from diverse parts of the nation, from diverse types of communities, from other countries. We value students from diverse age groups, types of families, social and economic classes. And most of all, we value students—and faculty—from diverse racial and ethnic groups.

There is an implicit co-curriculum in these values of inclusion: the incontrovertible notion that encounter with a wide variety of people from diverse backgrounds is itself an instructional methodology that prepares students to be better citizens of the nation and the world. This implicit co-curriculum is sometimes made explicit in formal encounter groups in which students talk through or act out differences in perceptions and experience.

But it is obvious that not all of our "diverse" institutions can attract "diverse" people, in no matter what combination of people-characteristics, in order to offer this valuable co-curriculum. Only truly national institutions of high selectivity, flagship public universities in some states, and a few colleges located in metropolitan areas with a full range of ethnic populations can achieve multi-level diversity. The ideal of a diversity of people again runs into inequities across the diversity of institutions.

John Matlock of the University of Michigan wisely perceives shortcomings in the supra-dialect definition of diversity in his observation that different ethnic groups define diversity differently. African-American students who participated in his longitudinal study of changing experience and attitudes toward diversity in their college years—he pointed out at the 1997 AAHE National Conference—did not describe diversity in terms of numbers or proportions, whereas white students did. Nor did they define diversity in terms of the opportunity for social interactions, whereas Asian-American and Latino students did. Instead, their definition focused on the university's commitment to inclusion—in curricular matters, in interactions between teachers and students of color, and most of all, in being taken seriously as students. This is not "diversity": it is common-sense equity.

We too often forget that some institutions, by virtue of mission, do not seek "diversity"

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in their student bodies, do not necessarily welcome a full "diversity of environments," and do not offer a "diversity co-curriculum"—at least as the supra-dialect has come to define "diversity." Women's colleges are for women, not men. The primary commitments of HBCUs are to the education of African Americans, and their student populations are (and will remain) overwhelmingly black. A community college founded to serve a barrio is not going to attract wealthy students of any ethnic background from another part of town.

In the "virtual university," the diversity co-curriculum is virtually impossible. A Baptist college is not designed for Jewish students (in an old joke, the University of Chicago, with its Episcopalian campus, agnostic faculty, and Catholic curriculum, was a singular exception).

Are these institutions exempt from our normative statements about diversity? Do we say that diversity is for some people but not for others? It's a tough question because we value special missions under the rubric of "diversity of institutions." The problem, again, is that the "we" who define the "diversity agenda" cannot imagine a diversity in any terms other than "different from us."

But while issuing self-righteous statements about the inclusive benefits of "diversity," the majority does something very strange when it consistently stereotypes and isolates Asian-American populations. First, we leave them out of the "diversity agenda" because—why? Because their academic behavior is too much like that of the people who define what diversity is and is not? Because they are different but not "diverse"? We tie ourselves in knots that Houdini could not unravel with our treatment of populations ranging from the Hmong of Duluth to fifth-generation Niesi of the East Bay to the South Asians of "Mississippi Makala."

Second, in the language of "underrepresentation," the majority tells them that they are—in Gish Jen's simple eloquence—"quite profoundly nobody...neither seers nor seen." (See Resources.)

Indeed. We have very few Asian-American school teachers in this country. We continue to receive immigrants from the Pacific Rim, for whom learning an alphabetic, inflected language such as English is a border-crossing like no other. Our diversity talk includes honor to role models in the ethnic match of teacher and student, but when we advance a policy of "minority teacher recruitment," Asian Americans are not part of the equity equation. Why? The question is simple but very uncomfortable.

Further Discomforts. There are other uncomfortable observations that bedevil the language of diversity and cry out for acknowledgment. We have learned that recruiting minority students or faculty to institutions located far from minority communities leaves them with such a low "comfort level" that they are not likely to stay, unless the institution is one of the few whose cachet is "worth" the discomfort. Here in September, gone by May.

We seem more concerned with this year's "diversity counts" than with what happens to real people. That is John Maitlock's point, too, in explaining black students' greater concern with retention and completion rates than with head counts. Those students are a lot smarter than the people responsible for the majoritarian discourse about diversity.

The bottom line in our tortuous uses of "diversity" in higher education is that we have created an ideal that can only be achieved by an aristocracy, by the right tail on the distribution of institutional opportunity. Maybe if we were not mesmerized by the word, we'd see that we've done something modestly better than that.

3. Some Evidence For Diversity, But Without the Word

Consider, first, the following data from the National Center for Education Statistics' longitudinal study of the high school class of 1982 (the so-called "High School & Beyond/Sophomore Cohort"). Participants were asked questions about the racial composition of the neighborhood in which they attended high school (1978 to 1982) and the racial composition of the neighborhood in which they lived at age 28 to 29 (1992).

A powerful test of internalization of the values of a pluralistic society is where one chooses to live. Taking out a mortgage or paying the rent to live in a given place takes one far beyond "tolerance" or putative understanding of "otherness." Your money is on the table.

Overall, 44 percent of the High School & Beyond cohort lived in more racially mixed neighborhoods at age 28 to 29 than they did when they were in high school. The probability of electing a pluralistic environment, though, increased with the level of educational attainment. For example, the likelihood of seeking out such a neighborhood was 53 percent for those who earned bachelor's degrees and 36 percent for those who never went to college.

In other words, degree recipients were half again more likely to live in multiracial neighborhoods as young adults than those who did not attend college. This trend, how-

ever, held more for black and white respondents than it did for Latinos and Asian Americans, more than 20 percent of whom moved into racially homogeneous neighborhoods by their late 20s.

There is a great deal more one can say about these data, and many more hypotheses to explore: the society as a whole became more mobile during the 1980s; the black middle class expanded dramatically; jobs, school, and circumstance often determine where one lives; college graduates are more likely to live in cities; age 28 to 29 may not be the best point in the life cycle to measure this phenomenon, and so on. But the correlations between higher education/degree attainment and investment in living in a more pluralistic community cannot be ignored. Certainly, our subjects learned something, even if by osmosis.

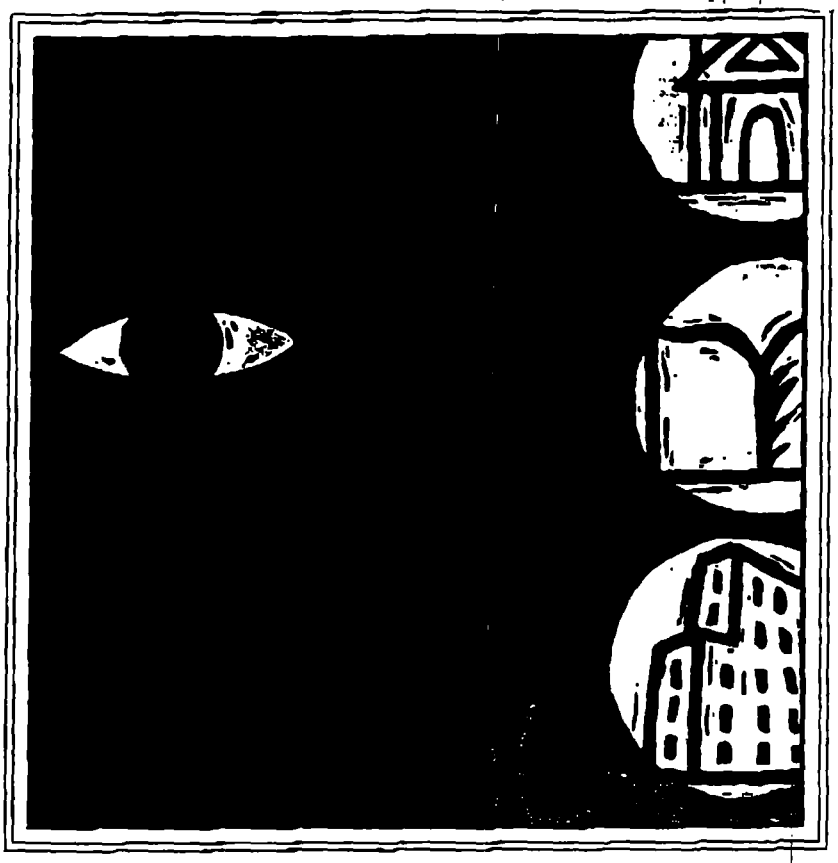
Second, instead of relying on "diversity requirements" for graduation under which a student can select one or two from dozens or even hundreds of qualifying courses (thus marginalizing the whole issue), more and more institutions have chosen the route of curricular integration of materials and topics on the culture and status of minority populations in the United States.

In disciplines ranging from sociology to literature, this is nothing new. But we have realized that in courses of study leading to careers in the helping professions (teaching, social work, nursing), professional service (medicine, law, architecture), and communications fields (journalism, public relations, commercial art), in particular, it is utter folly to leave this material out.

You cannot say you know anything about ethnic perceptions of health care, for example, on the basis of your social contacts or encounter groups or "diversity dinners" in college. The society cannot afford that level of superficiality: the material has to be part of your formal preparation as an effective health-care worker. There are social and economic utilities in this kind of "diversity curriculum"—except it isn't a "diversity curriculum"; it's common sense.

4. Equity of Participation and "Redefining Merit"

It is obvious why we are talking more about "diversity," with all its contradictions, in 1997. The 20 percent of all colleges and universities in the United States that exercise the slightest degree of selectivity in admissions at the undergraduate level, along with the much higher percentage of graduate and professional schools that exercise even a modest degree of selectivity in admissions, are facing radical changes in affirmative action.



Although litigation will cloud the environment in states that have been affected to date, it is safe to say that the traditional way of justifying race-based admissions has to be rethought. The President himself has set the guideline: "Mend it!"

Non-selective institutions, institutions with no national visibility, and special-mission institutions such as the HBCUs will go on doing their business as usual. The composition of their incoming classes will continue to reflect the regional and special populations they serve. But in what I called the "aristocracy" of institutional opportunity, the rules have changed.

These institutions—the ones that make the newspapers—have two choices. They can undertake massive efforts to prepare minority students better for higher education, or they can invent a new language in which to wrap old selection policies. The former task is bloody hard, will not yield results in 1998, and is potentially rewarding to the entire society; the latter is easy enough, will generate the numbers in whatever year you want them, benefits a relatively small population, and keeps the lawyers employed. Which route do you think these institutions will take?

So far, in the main, it's the latter. To achieve "diversity," some will now "redefine merit" without mentioning any visual characteristics of individuals. The same majority "we" who defined "the diversity agenda" in

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terms of "different from us" will be constructing the new definitions.

When we take this route we say, in effect, that the rules and formulas for building a bridge over an urban ravine are different for different populations. We say that population X doesn't need to know about strength of materials or how to calculate structural stress, or even how to cut steel and mix cement, so long as they have other "merits." The bridge may collapse; people may die; poor people and people of color may be more likely to die when the bridge collapses, but that's okay as long as the builders had "other merits."

We may even escalate this argument by claiming that cement, steel, wood, formulas of stress, and even the laws of gravity are socially constructed realities alien to population X. In such a patronizing manner would new euphemisms start leading us down the sides of increasingly slippery ravines.

The rest of the world—most of which is not white—does not behave this way. The principles for building bridges over urban ravines are the same from Manila to Mogadishu to Manaus. You either know how to do it and pass the licensing examination, or you will never be hired by anybody, anywhere, to build a bridge.

What goes for bridge-building also goes for financial analysis, copyright law, and internal medicine, for example. When John Matlock says that black students want to be taken seriously as students, this is what he means: they want to pass the licensing exam, build the bridge—and be asked back to build another.

When we embrace a propagandistic language that tells domestic minority populations, from an early age, that they do not have to demonstrate basic academic achievement, we shut them out of the world economy. At the least, we shut them out of careers that provide a high degree of mobility in a world economy. That is not only inequitable; it is unconscionably discriminatory.

Yes, a person who overcomes poverty, a single-parent home, and a dangerous neighborhood to graduate from high school has demonstrated greater persistence and "merit" than someone who never faced such daunting challenges. And there are lots of people who demonstrate precisely this kind of merit. But if they still cannot read—despite the high school diploma—we do them no favors by sitting them down in front of a college chemistry textbook or a Web site loaded with historical documents and watching them cry in frustration.

We do them fewer favors when we put them in remedial reading classes in college, thinking that we can induce, at age 18 or 19, the kinds of skills that the rest of the world recognizes as the earliest tools of learning.

What happens? The national data show that two-thirds of the students in remedial reading in college are also in at least two other remedial courses, and that their chances of completing a bachelor's degree by age 30 are about one in eight. This is not equity of participation in higher education. These students are obviously more likely to be unhappy, but they are smart enough to know that language—telling them that they have other "merits"—will not change the reality. If *they* know it, you can wager that redefining "merit" will be correctly perceived by the general public as another euphemistic blanket, and will threaten all the good efforts states are making both to improve opportunity to learn and to raise academic standards and achievement for all students.

5. Beyond Euphemism: Cleaning Up the Language With Numbers

If we disposed entirely of the word diversity, we might actually describe the reality and the problem. We need a few numbers on *access* and *completion* to help us out. Numbers have a remarkable ability to cut through fog.

The numbers come from the longitudinal studies of the National Center for Education Statistics and are the most powerful for purposes of determining rates of access and completion available anywhere in this country. First, consider the proportion of high school graduates continuing on to postsecondary education (that is, "access rates") in three age cohorts (Table 1).

The 1972 and 1982 figures are based on college transcripts taken at roughly age 30. The 1992 figure is based on self-reports two years after high school graduation. Despite these differences, the trend is clear: the general access rate for recent high school graduates is fairly high, and the "access gap" between whites and minorities has closed dramatically.

Yes, there are differences in attendance patterns (particularly for Latinos, who start with comparatively low high school graduation rates and rely heavily on community colleges). In this space, though, let's jump to bachelor's completion rates, *by age 30*, for people who attended at least one four-year college and earned at least a semester's worth of credits, *and*, in the case of the class of 1992, for the proportion still enrolled in 1994 (Table 2).

These stark tables leave a lot to be said, but the message is unmistakable: if the gaps in access have narrowed, the gaps in completion remain stubbornly wide. We will not know the

TABLE 1.*
POSTSECONDARY ACCESS RATES IN THREE HIGH SCHOOL CLASSES

	High School Classes of:		
	1972	1982	1992
All	60%	70%	75%
White	61	73	76
Black	54	62	71
Latino	53	58	71
Asian	77	92	86

TABLE 2.*
COLLEGE COMPLETION RATES IN THREE AGE COHORTS

	High School Classes of:		
	1972	1982	1992
All	66%	65%	60%
White	68	68	62
Black	49	42	52
Latino	44	49	52
Asian	81	79	73

**Sources:* The data for Tables 1 and 2 are taken from *The Condition of Education, 1996*, Washington, DC: National Center for Education Statistics, 1996, page 25; and the Data Analysis System (DAS) for the National Education Longitudinal Study of 1988, 1988-1994.

full story of completion for the class of 1992 until transcripts are gathered in 2002 or 2004, but the initial 5 percent access gap has already doubled, and this is not good news.

In the analyses of who finished bachelor's degrees and why for the high school classes of 1972 (by 1984) and 1982 (by 1993), as well as for who was most likely to attend a four-year college in the class of 1992, the answer is exactly the same: the people who were best prepared, regardless of race, regardless of financial aid. This is a commonsense finding, but you will never find it in a landscape of euphemisms.

What does "best prepared" mean? Using the rich data from the High School & Beyond longitudinal study, I have built an index of "academic resources" from five unobtrusive indicators:

1. Academic intensity of one's high school curriculum. This is a content measure worth 30 points out of 100 on the academic resources scale. The evidence comes from high school transcripts.

2. Highest level of mathematics studied in high school. Also drawn from high school transcript records, this indicator adjusts the content and intensity measure. You get two extra points for reaching trigonometry, precalculus or calculus. You lose two points if all of your high school math courses were remedial.

3. Class rank, in quintiles. This is a performance measure. Where class rank is not available, grade point average in academic subjects, by quintile, was substituted (the correlation between class rank quintile and academic GPA quintile is .81). At the top, you get another 30 points.

4. Score on a "mini-SAT," a test of general learned abilities, as given in the 12th grade. The scores were set out in quintiles, with the highest quintile yielding 35 points and the lowest yielding seven.

5. Score on a reading test given in the 12th grade. Reading is given a special emphasis because of its prominent position in the constellation of skills necessary for higher-order thinking and applications, let alone its critically correct position in current national policy as articulated by Education Secretary Richard Riley. Again, set out in

"Academic Resources," Access, and Degree Completion, by Race

Academic Resources Models	White	Asian	Black	Latino
1) Tests Weighted High				
Proportion in highest two quintiles	43%	55%	14%*	17%*
Access rate of those in highest two quintiles	91	98	89	93
Highest degree by age 30:				
Associate's	7*	—	7*	10
Bachelor's	58	70	44*	42*
2) Curriculum Weighted High				
Proportion in highest two quintiles	41	57	17*	19*
Access rate of those in highest two quintiles	92	98	87	91
Highest degree by age 30:				
Associate's	7*	—	6*	9
Bachelor's	59	70	43	39
3) Class Rank/GPA Weighted High				
Proportion in highest two quintiles	42	59	17	22
Access rate of those in highest two quintiles	90	97	89	88
Highest degree by age 30:				
Associate's	7*	—	6*	13
Bachelor's	57	68	42	36

*The differences reflected in these pairs are not statistically significant.
— Too few sample observations for a reliable estimate.

quintiles, you get five points for scoring in the top group.

Put it all together in academic resources, sort by quintiles, run some basic cross-tabs, and perform some basic statistical tests. One finds first that the correlation between academic resources and degree completion of any kind (bachelor's or associate's) is .56, and that the correlation with the bachelor's degree alone is .57. That's a fairly strong number for this type of relationship. In addition, 74 percent of the students in the highest quintile earned bachelor's degrees versus 41 percent in the second quintile versus 17 percent in the third—and down it goes in leaps and bounds.

Some people will say that this formula for academic resources gives too much weight—40 percent—to third-party tests, that African-American and Latino students do not perform

as well as others on tests, and therefore, that the formula is unfair. (It is more accurate to say that the correlation between socioeconomic status [SES] and test score was much higher [.394] than that between SES and the academic intensity of curriculum [.290], let alone class rank/GPA [.171]. Since African-American and Latino students are overrepresented in the lower SES quintiles, they will be more affected by these relationships.)

Others will say that the tests do not judge the students as much as their opportunity to learn, and hence are a check on the quality of delivered education. Students may take Algebra 2, for example, but in high schools in a barrio, a rural county in south Texas, or a second-tier suburb in Alabama (the Census tells us very clearly that black and Latino students are not confined to central cities), the course may be the equivalent of Algebra 1 taught elsewhere.

With these hypotheses in mind, I developed four other weightings of the basic academic resources formula, each of which counted the general learned abilities test less and either the curriculum or performance variables more.

Table 3 presents three of the five variations for all students who graduated from high school within a year of the norm for the class of 1982. For each alternative weighting model, Table 3 also indicates the proportion of students in the top two quintiles who a) continued their education after high school ("access rate") and b) earned associate's and bachelor's degrees by age 30 (in 1993), by race. (See sidebar for statistical information.)

Table 3 shows us first that the access rate for anyone who winds up in the top 40 percent on the academic resources scale—no matter what weighting is used—is stunningly high: roughly 9 out of 10, regardless of race (the minor differences, by race, are not statistically significant). Second, the table indicates, as one would expect, a higher proportion of black and Latino students will be included in the top two academic resource quintiles if we maximize high school class rank/academic GPA (weighting it at 50 percent) and minimize the weight for the general learned abilities test (15 percent).

But the increase over the model in which tests are weighted high (40 percent) is not great (14 to 17 percent for African Americans and 17 to 22 percent for Latinos). This weighting also produces a slight loss in degree completion for both those African Americans (51 versus 48 percent) and Latinos (52 versus 49 percent) who wound up in the top two quintiles. All of these changes, even if statistically significant, are minor. The message is remarkably consistent, no matter what weighting one invokes.

If we are genuinely interested in degree completion for minority students, then, we have to help them acquire more of the resources that enhance their chances: an academic curriculum of high intensity and of a quality that inevitably will be reflected in third-party assessments. And if 71 percent of African-American and Latino high school graduates now continue their education after high school (see Table 1), our objective should be not merely to improve their representation in the top two quintiles of "academic resources," but to fill the top three—or even four—quintiles with more academic content and meaning.

We have been told persistently that minority students need minority faculty as "role models" in order to finish degrees. The assertion starts a cat chasing its own tail. For we will not get minority faculty without minority PhDs, and we will not get minority PhDs (or school teachers or engineers) without improving the bachelor's degree completion rates. And we will not improve completion rates until higher education makes a massive, creative effort (with courage, conviction, and real money) to improve the precollegiate academic resources of minority students.

This is what we have to do—not play language games. Otherwise, we will be chasing our tails for the next three decades, and fewer students will have a chance to learn anything about the values of pluralism—even by osmosis.

6. Creating "Diversity" With Sweat, Not Word Games

School-college collaboration projects have multiplied over the past decade, but to the best of anybody's ability to count, they are currently involving relatively small numbers nationally. One noted program recently boasted at a national convention that it had affected 400 students, of whom nearly 70 percent ultimately earned bachelor's degrees. That sounded fabulous until you realize that it happened over a period of 12 years. Godspeed to all of these efforts, but we need something more.

Virtually every state in the country is working on K-12 systemic reform projects and trying to ensure equity in the opportunity to learn. It isn't easy because of factors in students' environments and uses of time that are beyond the control of schools. Higher education thus has to help the schools by *supplements* that change those non-school environments and non-school uses of time.

If we are genuinely interested in degree completion for minority students, then we have to help them acquire more of the resources that enhance their chances.

Instead of spending $50,000 on your next "diversity conference," at which academics will preach to the choir, set 50 disadvantaged minority kids up with desks, computers, and Intranet connections.

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President Clinton's proposal to use Americorp's volunteers and College Work-Study students as reading tutors for 8-year-olds is right on target—particularly if combined with family literacy programs such as EvenStart—because reading abilities are the key to everything. Reading competence acquired at age 8 will not be lost, but it will stagnate unless higher education takes the President one step further.

So where can we focus the real work? We can start with precollegiate outreach programs designed to change *non-school uses of time*, but which—as reflected in a recent National Center for Education Statistics survey of 1,200 two-year and four-year colleges—affect too few, too late, with too little. (See Resources.)

How so? Only 32 percent of institutions of higher education even sponsored a precollegiate outreach program for disadvantaged students. The median number of participating faculty was six per college, the mean student/staff ratio was 46:1, and 42 percent of participating students attended only during the summer. One out of seven participating students entered after high school graduation, which means they didn't stay long. Only a third entered prior to high school, and—we can infer—were out well before they finished high school.

The average reported annual time in these programs was 250 hours. That number sounds decent—until we see how the time was used. Colleges were asked to indicate the three most important services carried out within their largest outreach programs. The top item on the list was "social skills development." Preparatory courses and remediation ranked fifth and sixth.

Social skills development will not get you a degree. Academic preparation will increase the chances dramatically.

The NCES survey covered all kinds of precollegiate outreach activities and should not be read as a current evaluation of federally sponsored precollege TRIO programs such as Upward Bound. But if we took the High School & Beyond cohort (granted, it's not contemporary with the NCES survey but it is all we have at the present moment to talk about long-term college attendance and attainment), broke out a universe of students in the lowest two socioeconomic-status quintiles, split these groups between those who said they participated in a precollege TRIO-type program and those who said they did not, and asked what difference this participation made, we would find that the differences in access rates and degree completion by age 30 were comparatively modest, and the differences in preparation were nil.

Fifty-seven percent of the TRIO-type students continued their education after high school, compared with 50 percent of the non-TRIO-type group. The difference in bachelor's degree completion rates was 17 percent (TRIO-type) to 11 percent (non-TRIO-type).

While the degree-completion spread speaks better for TRIO-type programs, these numbers are far below the 44 percent rate for all High School & Beyond students who continued their education after high school. There was no difference in the profile of math course-taking in high school: 71 percent of the TRIO-type population and 74 percent of the non-TRIO-type group never got as far as Algebra II. And in both groups, only 5 percent earned 11 or more Carnegie Units in core academic subjects in high school. The data suggest that an injection of quality control is in order.

For the High School & Beyond cohort, as well as for the students of the early 1990s in the programs reported in the NCES survey, minorities accounted for 60 percent of those in precollegiate outreach programs. If we are ever going to do the right thing for minority students, and if we are ever going to achieve true diversity, higher education has to do something very dramatic.

So let's set the following targets for the next five years:

- Double the proportion of four-year colleges with precollegiate outreach programs; and, because of their proximity to isolated populations, increase the number of community colleges sponsoring these programs.
- Quadruple the median number of faculty involved, and cut the mean ratio of students to staff to 30/1 or less.
- Start all participating students while they are still in middle school; use Saturday schools during the academic year and eight-

Statistical Information

For those interested in statistical matters, simple logistic regression analyses of bachelor's degree completion by "academic resources," controlling for socioeconomic status (SES), show that with each move up the quintile ladder of academic resources, the chances of earning a bachelor's degree (not the best way of describing the "odds ratio," but it will have to do) increased by 3.3. For each move up an SES quintile range, the odds ratio increased by 1.6. Moving up a step of the academic resources ladder, then, had more than twice the effect on degree completion than moving up a step on the SES scale. These numbers change but slightly according to which of the five models of academic resources is used.

In a simple regression model (Ordinary Least Squares) with the same variables, the coefficient for academic resources is .167 with a T value of 34.1, whereas the coefficient for SES is .058 with a T value of 11.8. The Adjusted R-square for academic resources alone is .310, which means that, in this model, academic resources explain over 30 percent of the variance in bachelor's degree attainment for the High School & Beyond/Sophomore Cohort.

When SES is added, the two variables have an Adjusted R-square of .324, which means that SES did not add that much to the explanatory power of academic resources (not surprising when the correlation between SES and academic resources was .288). Further investigations of this model, including replications with other data sets, other approaches to weighting the components of academic resources, and more sophisticated statistical analyses are being pursued.

week sessions in summer, with modest but escalating stipends in a college scholarship escrow account for each year the student remains in the program after grade 8.

- Put a desk, a dedicated computer, and *Intranet* connection in every participating student's residence, and arrange (at least) twice-weekly interchanges with student mentors; involve family and extended family in these electronic conversations and thus leverage the impact of learning.
- Where the dominant home language is not English, include ESL for family members who wish to participate so as to expand the students' environment of learning.
- Emphasize reading skills from the outset, starting with software manuals; using Intranet tutorials, develop fluency in manipulating symbolic information.
- Recognize that the students would not enroll in these programs unless they wanted to learn; hence, elevate preparatory instruction to the top position in terms of time and effort.
- Reserve the second slot in terms of time and effort for cultural expression and the development of talent in music, art, dance, or theater, as appropriate to institutional location and capacity. These activities also reinforce academic objectives.
- Monitor and evaluate annually, and do not be afraid to fire somebody if the turnover rate is excessive. Remember that it's the *students* who count.

What does it cost? Exclusive of the escrow account but including the computers and Intranet connections, I estimate the cost will be an annual mean of $4,000 per student. If 1,000 institutions that were not doing this in 1996 started doing it in 1997, taking on an average of 30 students a year beginning in grade 6 or 7 and holding 80 percent of them through grade 12, we would affect about 168,000 more disadvantaged students by 2003 (two-thirds of them black or Latino), and at a national cost of about $672 million in 1997 dollars. Given the benefits, that's cheap.

Who will pay for this expansion and increased quality control? If they are serious about "diversity," colleges themselves will, particularly those with a modicum of selectivity. Think of it as part of the President's call for more voluntarism. Instead of spending $50,000 on your next "diversity conference" at which academics will preach to the choir, set 50 disadvantaged minority kids up with desks, computers, and Intranet connections. The choir will sing.

For four-year institutions, start setting aside 5 percent of your endowment income now, and 5 percent of your annual fund drive. It will go a long way. Or, in your next capital campaign, target 20 percent for precollegiate outreach programs, and get the foundations to match. This is far more consequential business than "redefining merit"—far more expensive, but far more credible. It has the potential to cut the degree completion gap in half—and without the jabberwocky. It's time to walk the walk and drop the talk.

COMMENTARY

Turning College 'Access' Into 'Participation'

By Clifford Adelman

The idea of "access" to higher education has been enshrined in rhetoric for three decades, during which time the number of undergraduates in the United States more than doubled, from 6 million to nearly 13 million, while the proportion of college students completing degrees of any kind remained flat. This contrast strongly suggests that "access" may not be the word we need in 1997.

"Access" is what happened when buildings were modified with ramps and special elevators so that individuals previously excluded by structural features had the opportunity to enter and use the facilities. Indeed, they enter, and in great numbers. But what they actually do once they are in the *buildings and whether other users interact with them* in productive ways—these are not "access" issues.

Similarly, a variety of policies have opened the doors and provided ramps into colleges, community colleges, and other postsecondary institutions for ever-higher proportions of our high school graduating classes. Three out of four high school graduates (and seven out of 10 black and Latino high school graduates) in 1992, for the most recent available example, took advantage of "access" to higher education by 1994. That 75 percent "access rate" is up from 67 percent for the class of 1982 and 58 percent for the class of 1972.

In this accounting, "access" means that you enrolled for at least one course, and stayed long enough to generate a record. But what kind of record? Data from the National Center for Education Statistics allow us to follow the same students on high school and college transcripts from age 14 to age 30. Of those in the high school class of 1982 who entered higher education, we find that, by 1993:

- Thirteen percent were incidental students: They earned no more than 10 credits, and 60 percent were gone within a year of entry.
- Another 24 percent earned more than 10 credits but less than two years' worth of credits. Most started out in community colleges, nearly half attended more than one college, and an even higher proportion produced a curricular trail for which "amorphous" is a generous description.
- Eight percent earned more than 60 credits but no degree. Nearly two-thirds of these students started out in four-year colleges, and 70 percent attended more than one school. The majority of them wandered from one major to another with no resolution.
- The balance completed credentials: certificates (6 percent), associate's degrees (9 percent), and bachelor's degrees (40 percent). They at least emerged from the building with a currency on which to draw in a credential-driven labor market.

In these stark numbers we are looking at different levels and indicators of "participation" in higher education, not "access." Compared to participation, access is easy work. If our rhetoric emphasized participation, we might act more effectively in light of the problems that these numbers begin to reveal.

I'm not sure what we can do about the "incidental students." More than a third were either high school dropouts at some time or said they really didn't like school. For a majority, educational aspirations were low, and precollege records followed suit with little academic content. This combination is formidable.

But we can work with and for the other potential noncompleters, whose histories reflect inadequate high school preparation in mathematics (with the majority not getting even as far as Algebra 2), comparatively high rates (20 percent) of college-level remediation in reading, a high incidence of "stop-out," incoherent courses of study, and a considerable amount of "school hopping." Multi-institutional attendance is not damaging in and of itself, but in this configuration of behaviors, it adds to a spiral of disillusionment.

How do we address these dissonances so that students with access can use the edifice of higher education more efficiently? Bringing high school students through and (especially) beyond Algebra 2 has an incredibly powerful impact on degree completion. So does improvement in reading skills, which we so naively take for granted. We ask our community colleges, in particular, to develop these abilities after students enter the building. But there are other options for community colleges to help guarantee student learning before "access." For example, just as community colleges contract

(OVER) →

with businesses to provide customized training programs, so could they be funded to contract with high schools for courses such as trigonometry and supplementary skill-building in reading, using the "feeder" relationships many have developed with high schools in the context of tech-prep and school-to-work programs. Some of this goes on today, but not enough.

Another strategy addresses nonschool time, and the dispiriting fact that only 28 percent of community colleges currently operate precollegiate outreach programs under any sponsorship. Depending on proximity to the student population, one could choose approaches ranging from year-round Saturday schools (rural, suburban) to drop-in community technology centers (urban) to Intranet links from community college learning centers to terminals in libraries, churches, and other community institutions. The participation problem requires a vast expansion of these efforts.

But we need to do some work inside the building, as well. The rates of stop-out and eclectic multi-institutional attendance reflect poor monitoring and advisement in college as much as student consumerism. The fact that a significant proportion of the noncompleters have no academic identity indicates, too, a failure to assist them in finding fields of interest and strength. To counter stop-out, colleges may have to bend the rules to keep the student enrolled, attached to the institution and its community, even if for one course per term. The task of assisting students in establishing academic identities, though, is more difficult and may involve a degree of institutional candor and risk that we rarely encounter in higher education. If the student expresses interest in a particular academic path and the college has nothing to offer in that field but a trail with potholes and washed-out bridges, it has an obligation to help the student transfer to a school that can do better.

After all, if we really care about something more than "access," it's the student who counts, not our institutional egos. ■

Clifford Adelman serves as a senior research analyst with the U.S. Department of Education in Washington.

We the People @

IBM®

We the People @ IBM are first and foremost individuals. Individuals in every sense of the word. We come from diverse origins, live different lifestyles and pursue our own dreams. What we share is the belief that each and every one of us makes a meaningful contribution to IBM. We also believe that no particular background has a monopoly on innovative thinking ... enjoys inherent advantages ... or possesses the secret to success.

In fact, We the People @ IBM believe that "none of us is as strong as all of us." We are that much stronger because of our social and cultural diversity. What's more, we're proud to be part of a company that is sensitive to the needs of its employees and their communities. We are also proof of IBM's ongoing commitment to a single measure of excellence. A standard based solely on talent, results and commitment.

Together, **We the People @ IBM** — American Indian, Asian, Black, White, People with Disabilities, Gay and Lesbian, Hispanic, Men and Women, Young and Old, or any combination — will lead Team IBM through the 90s and into the next century.

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People @ IBM: Ileana & Vince Vila

Ileana: 20 years @ IBM. Advisory Engineer, Personal Systems Group. BS Electrical Engineering, U. of Miami (#1 in class). Born: Cuba. Interests: Woman's soccer league, working out, watching daughter play soccer. Member: Society of Women Engineers, Cary High Athletic Club.
Vince: 20 years @ IBM. Consulting Program Administrator, Personal Systems Group. BS Electrical Engineering, U. of Miami (magna cum laude). Born: Cuba. Interests: Soccer, college football. Membership: Cary High Athletic Club, Capital Area Soccer League, church building campaign. The Vilas live in Cary, NC, and have two children.

IBM gave us more than a job. It offered an environment that appeals to our competitive natures while satisfying our desire for stability. It encourages us to work hard, play hard, but never lose sight of the real meaning of winning — balancing successful careers and our home life. ”

IBM is a culturally diverse organization. *Inclusion* has been an integral part of our corporate culture for more than 80 years. As one of the first global enterprises, and as a leader in an industry characterized by original thinking, we've long recognized the value that different people bring to our company. Toward that end, we introduced — many years before required by law — practices and policies that encourage workforce diversity.

Today, IBM has one of the most diverse workforces in the world. A person's gender and ethnicity are only two aspects of diversity. Over time, we have expanded our definition of diversity to include those human characteristics that make each person unique: race, color, gender, national origin, culture, lifestyle, age, disability, sexual orientation, Vietnam-era veteran status, economic or marital status and religion.

STRATEGICALLY CORRECT

In America, diversity is still a political issue — for example, the current debate over abolishing affirmative action. For IBM, diversity has transcended politics and is clearly a business issue. To compete and win in the marketplace, we need to attract, and to retain, the most talented and motivated people. This is as true in our U.S. markets as it is in the global arena.

The IBM principle "The marketplace is the driving force behind everything we do" helps explain why workforce diversity is a strategic imperative. To know our markets and serve them well requires that we understand them. And understanding comes from employing people who represent those markets. Only by drawing the best people from today's vast and diverse pool will we achieve our business objectives.

AN ONGOING COMMITMENT

Building a team of outstanding, dedicated people requires focusing not on what an individual is, but on his or her knowledge, skills and ability. It also means recognizing that characteristics unrelated to job performance are entirely irrelevant.

This perspective was not formed overnight. For more than two generations, IBM has worked to establish a workforce free from all forms of discrimination and harassment. The first disabled employee joined the company in 1914. IBM placed women in professional positions in 1936, and named its first female vice president in 1943. The first Black sales representative was hired in 1946, and a Black engineering manager was named in 1956.

A GLOBAL APPROACH TO DIVERSITY

Workforce diversity fuels the high performance culture necessary to compete in the global market. Since 1924, when the company became

"In needlework and workplace, the greater the variation, the more interesting the results.

As both an advocate for diversity and as a needleworker, I consistently find that it is the differences — whether in color, material or point of view — that add vitality and create the best product."

26 years @ IBM. Development Programmer on assignment as Human Resources Equal Opportunity and Diversity Program Manager, Storage Systems Division. BA Mathematics, California State University at Chico. Interests: Needlework, traveling. Member: National Assn. of Minority Engineering Women Program Administrators, National Society of Black Engineers Region Six Advisor, National Action Council for Minorities in Engineering. Married with one child.

International Business Machines, we've considered the world our market. Today, it's interesting to consider that IBM does business in almost every nation on earth. With so universal a scope, it's imperative we promote an equally international perspective. As a global company, we view every citizen of every country as a potential consumer.

Every employee must know that IBM employs people who look [illegible] appreciate them. They must believe our people have [illegible] meet their unique business and personal needs. [illegible] of IBM employees wherever they work, [illegible] they are [illegible]

At any given time, IBM employees are on assignment in foreign countries. These individuals play a critical role in our global strategy. They may be on assignment to help introduce new products in their home markets, or as part of an international team developing products or strategies. What every visiting IBM employee can expect during his or her assignment is to be treated as an equal member of the IBM team.

The People @ IBM: Cynthia Trevino Seymour

"I wouldn't be here if it weren't a nurturing place where I could grow. Grow with my family. Grow as an individual and be recognized for my effort. My managers have always understood that being a wife and a mother are the most important things to me."

16 years @ IBM. Express Services Marketing Representative. BA Business Administration, U. of Texas, Austin. Interests: Her daughter's Girl Scout troop, interior design, eating out, travel. Member: Alpha Phi Sorority, Girl Scouts of America. Married with two children.

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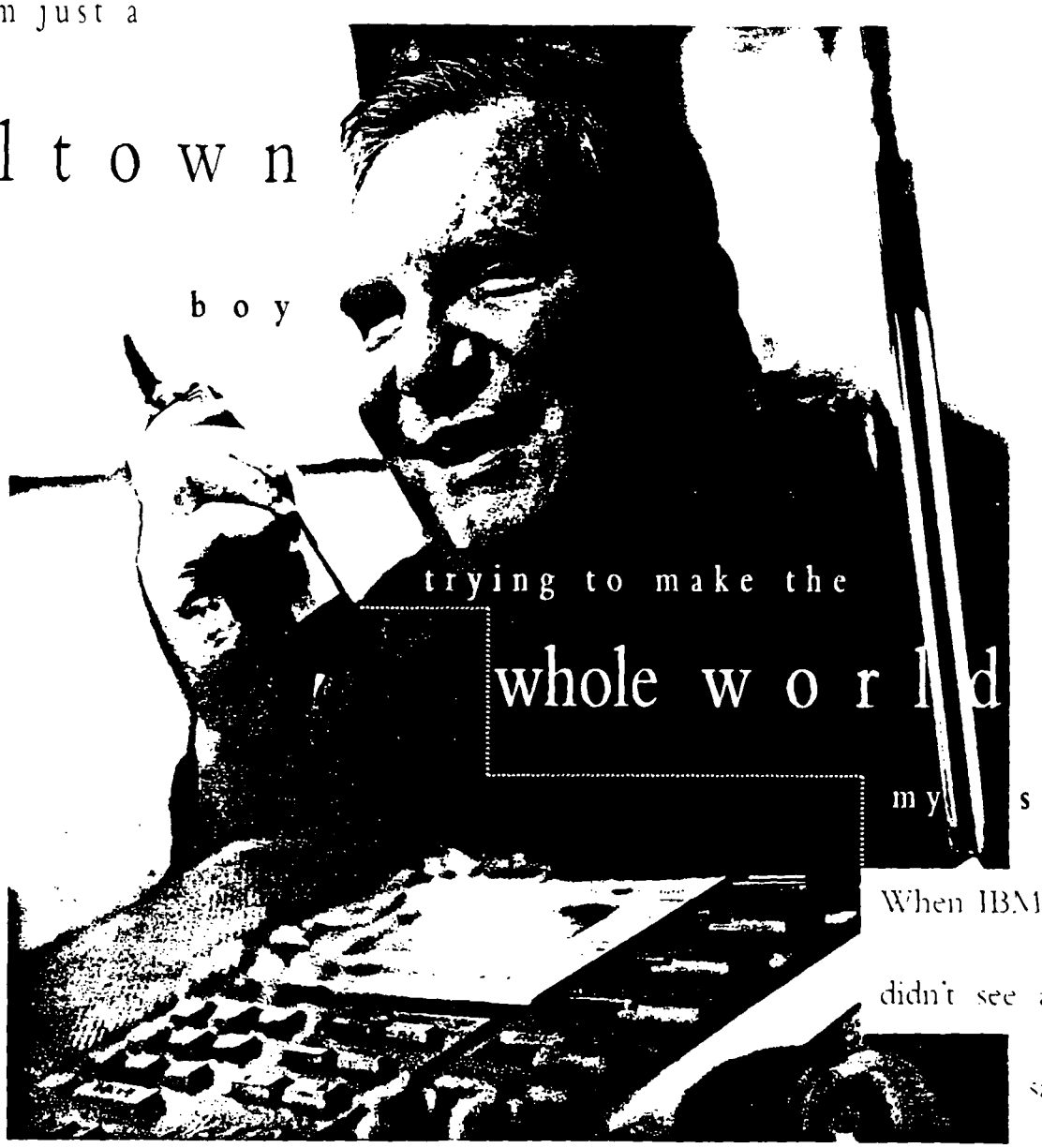

trying to make the

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my small town.

When IBM looked at me, they didn't see a blind man. They saw an opportunity. When at first it didn't work out, they could have turned away, but they didn't. We looked again, and together found a place where I could succeed ... and I did. "

Disabled Employee of the Year, 1995, *CAREERS & the disABLED* Magazine

17½ years @ IBM. Technical writer, Networking Hardware Division. BS Education, Clarion State College, Clarion, PA; MLS, U. of Pittsburgh, PA. Interests: Amateur radio, reading (history and biography), surfing the Internet. Member: American Council of the Blind, American Radio Relay League, Handy Hams. Married.

Just as our nation must demonstrate the will to acknowledge and correct evidence of inequity, a company must understand how these issues impact its bottom line. We at IBM are committed to addressing social issues that could inhibit our effectiveness in the marketplace. Since workforce diversity is a strategic resource, we have policies, programs and initiatives that encourage and sustain diversity. These programs are not peripheral to what we do as a company; they are central to our success.

Our approach to workforce diversity is built on three platforms: Equal Opportunity, Affirmative Action and Work/Life Programs. Equal Opportunity means opening the doors at every level of the company to qualified individuals. Affirmative Action includes those programs that ensure everyone has the opportunity to compete for jobs and offers on an equal basis. IBM Work/Life Programs help employees manage the demands of their jobs with the increasing obligations of their lives.

Equal Opportunity @ IBM

Equal opportunity means equal access to the workforce. For minorities and people with disabilities, access was once a matter of getting through the door. For women, who were traditionally confined to clerical and support work, it was access to professional and managerial positions.

Today, access is about the elimination of all barriers. It's about encouraging individuals to compete for advancement, up to and including senior management and executive positions. Equal opportunity is not a static concept. As doors open for groups previously excluded, the concept continues to expand. In the final analysis, our commitment to Equal Opportunity Programs keeps our corporate culture vital, increases our productivity, and enhances our presence in the marketplace.

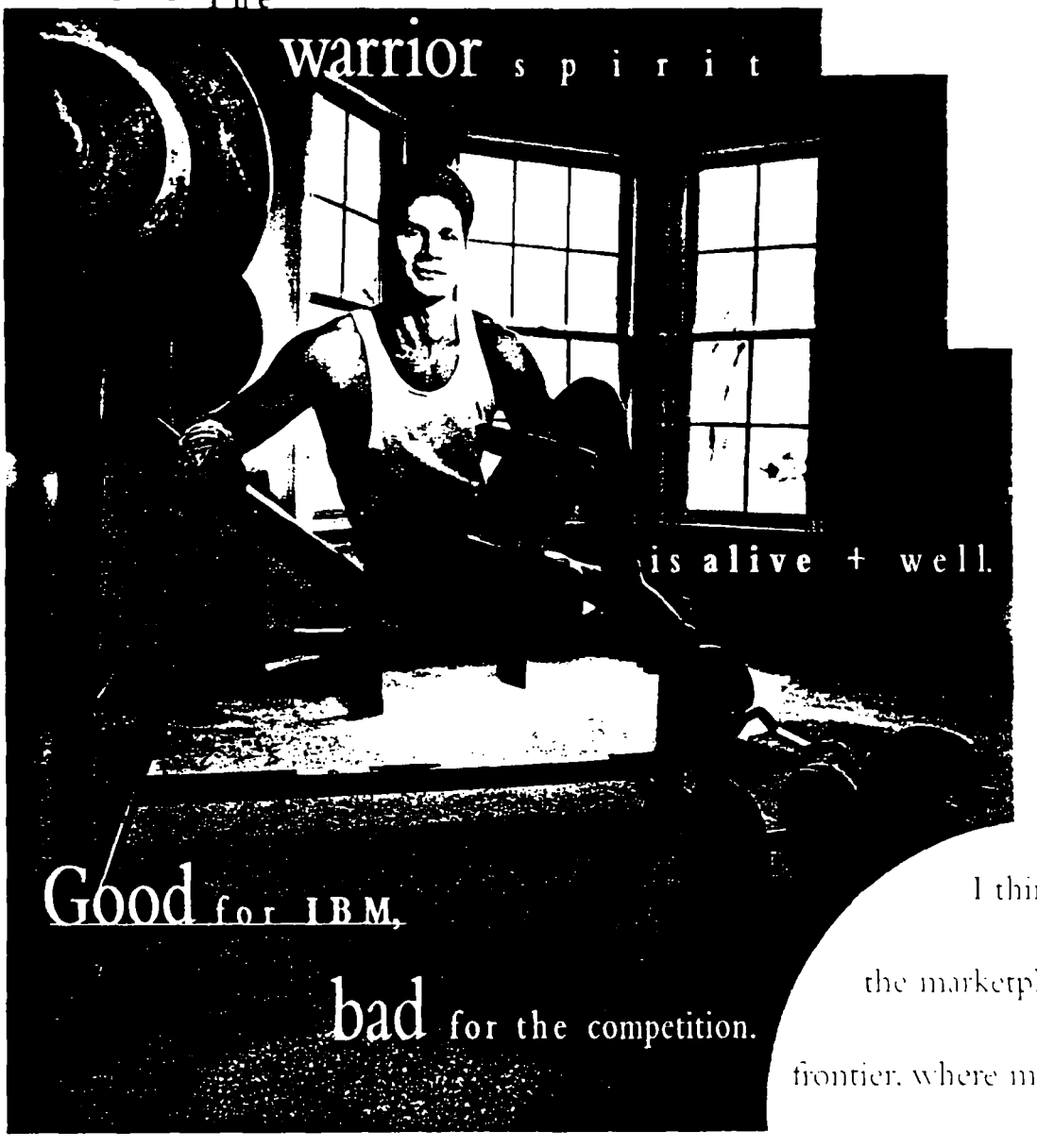
REAL OPPORTUNITY

Discrimination on the basis of factors unrelated to the job simply are not tolerated at IBM. Individuals are hired and promoted on the basis of their qualifications and job-related requirements. To proceed otherwise would be wrong and have a detrimental effect on our business.

IBM's first written statement of equal opportunity was published in 1953, more than a decade before the landmark Civil Rights Act of 1964. This statement reinforced IBM's commitment to nondiscriminatory hiring practices. Since then, our policy has maintained a nondiscriminating and harassment-free environment, where no IBM employee feels at a disadvantage because of his or her differences, but where all employees are confident they will be evaluated solely by their qualifications.

At IBM, we work toward creating an atmosphere conducive to the highest quality work. A workplace where all people feel comfortable and productive. Furthermore, IBM will not allow any behavior that creates an intimidating or offensive environment.

The People @ IBM: TERRY POPP



11½ years @ IBM. Inside Sales Manager/ Professional Development Manager, IBM North America. BA Computer Science, U. of Georgia. Interests: Physical fitness, sports, travel. American Indian — one-quarter Lakota Sioux.

"I think of the marketplace as a new frontier, where my traditional tribal values give me and my team a competitive edge."

Employees are encouraged to come forward and talk to their manager at any time they have experienced harassment. Communication channels, such as Open Door and Speak Up! programs, exist to help employees address their situations.

Because of the corrosive effect of harassment on morale and productivity, employees engaged in these activities are subject to disciplinary measures, including dismissal. Our standard is outlined in the *IBM Business Conduct Guidelines, About You At* and other IBM publications.

ACCESS FOR PEOPLE WITH DISABILITIES

Since the earliest days at IBM, people with disabilities have enjoyed opportunities in hiring and training. In fact, IBM's commitment to people with disabilities has demonstrated itself in renovated buildings and offices, and through the introduction of cutting-edge technology. These actions, which offer greater access to employees with disabilities, began decades before the first federal law addressed this issue.

Today, employees at all levels of the company who have known disabilities are included in the company's affirmative action program. The following are examples of workforce accommodations made for IBM employees with disabilities:

- Architectural modifications and computer adaptations for the mobility impaired.
- Electronic bulletin boards to aid employees with visual or mobility impairments.
- IBM publications on audio cassettes for the visually impaired, and software and printers for Braille translations.
- Sign language interpreters, captioned videotapes and telecommunications devices for the hearing impaired.

In addition, IBM has developed a variety of products and services used by employees that are also available in the marketplace, including:

- IBM ScreenReader* with audio output for computer users with visual impairments (also available with OS/2* graphical user interface screens).
- IBM SpeechViewer* II, a computer program that converts elements of speech into interactive graphic displays with audio feedback to increase the efficiency of speech therapy.
- IBM THINKable*, a multimedia software program to help people with memory loss resulting from head injury, developmental disabilities, drug abuse, neurological disorders and other cognitive disorders.

The People @ IBM: DEBBI COSENTINO

"Everybody has their idea of family. This is mine. At home, I enjoy a deeply committed 14-year relationship and two beautiful children. And at work, supportive management that helps me be my best at home and in my career."

14 years @ IBM. Associate Programmer, Software Group. BS Police Science Admin., Northern Arizona University. Interests: Her children, the Internet, raising cockatiels. Member: ¡HABLA! (school parent group). Debbi (standing) with domestic partner and two children.

The People @ IBM: DEBRA ZYKOFF & CARRIE HARDEN.

"If the question is

Job sharing gives us the best of all possible worlds — time with our families, income, and professional satisfaction — while it offers the company two dedicated, hardworking professionals. It's a balance that works to everyone's satisfaction."

Debra (left, in photo): 12 years @ IBM. Executive Secretary, Semiconductor Research and Development Center. Interests: Needlepoint, boating, collecting crystal pieces. Married with one child.
Carrie (right): 13 years @ IBM. Executive Secretary, Semiconductor Research and Development Center. Interests: Horseback riding and swimming. Married, three children and one on the way.

- AccessDos, a collection of software aids that provide extended keyboard, mouse and sound access for IBM DOS users. These extended access features have been incorporated into the standard OS/2* operating system.
- IBM VoiceType Dictation*, a voice recognition product that allows a person to provide voice input to a computer.
- IBM KeyGuard, a molded keyboard overlay with holes that expose and isolate each keytop, thus enhancing keying accuracy for those who may have impaired hand or arm muscular control.

IBM communications regarding our program for people with disabilities include an awareness and training module for line management on the Americans with Disabilities Act, enacted in 1992.

IBM has also established organizations to assist people with disabilities including the following:

- *The Special Needs Programs Department* in Somers, NY, which reviews product design for accessibility and coordinates research projects both within and outside IBM to apply new and emerging technologies to products for people with disabilities.
- *Special Needs Systems* in Austin, TX, which designs, develops, manufactures and brings to the worldwide marketplace products specifically created for individuals with disabilities. IBM Special Needs Systems has contracted with selected market resellers and vendors of disability products to market these products.

In 1967, IBM created an equal opportunity department to establish guidelines for fulfilling company policy. Today, workforce diversity is administered throughout the business and at every IBM location.

The workforce diversity staff ensures that IBM's policies — and the law — are fully observed. IBM managers are responsible for implementing our workforce diversity objectives. To help and guide them, managers receive annual awareness training as well as evaluations on how well they meet our goals. Employees also participate in at least one review a year to ensure that they understand IBM policies and programs.

OPPORTUNITIES FOR VIETNAM-ERA AND SPECIAL DISABLED VETERANS

Another group included under the umbrella of workforce diversity is Vietnam-era and other Special Disabled veterans. IBM is committed to the employment and advancement of these men and women, as well as their participation in the economic mainstream. IBM employs nearly 12,000 Vietnam-era and Special Disabled veterans — in all areas and at all levels of our business — throughout the United States.

Affirmative Action @ IBM

IBM affirmative action programs provide individuals with the opportunity

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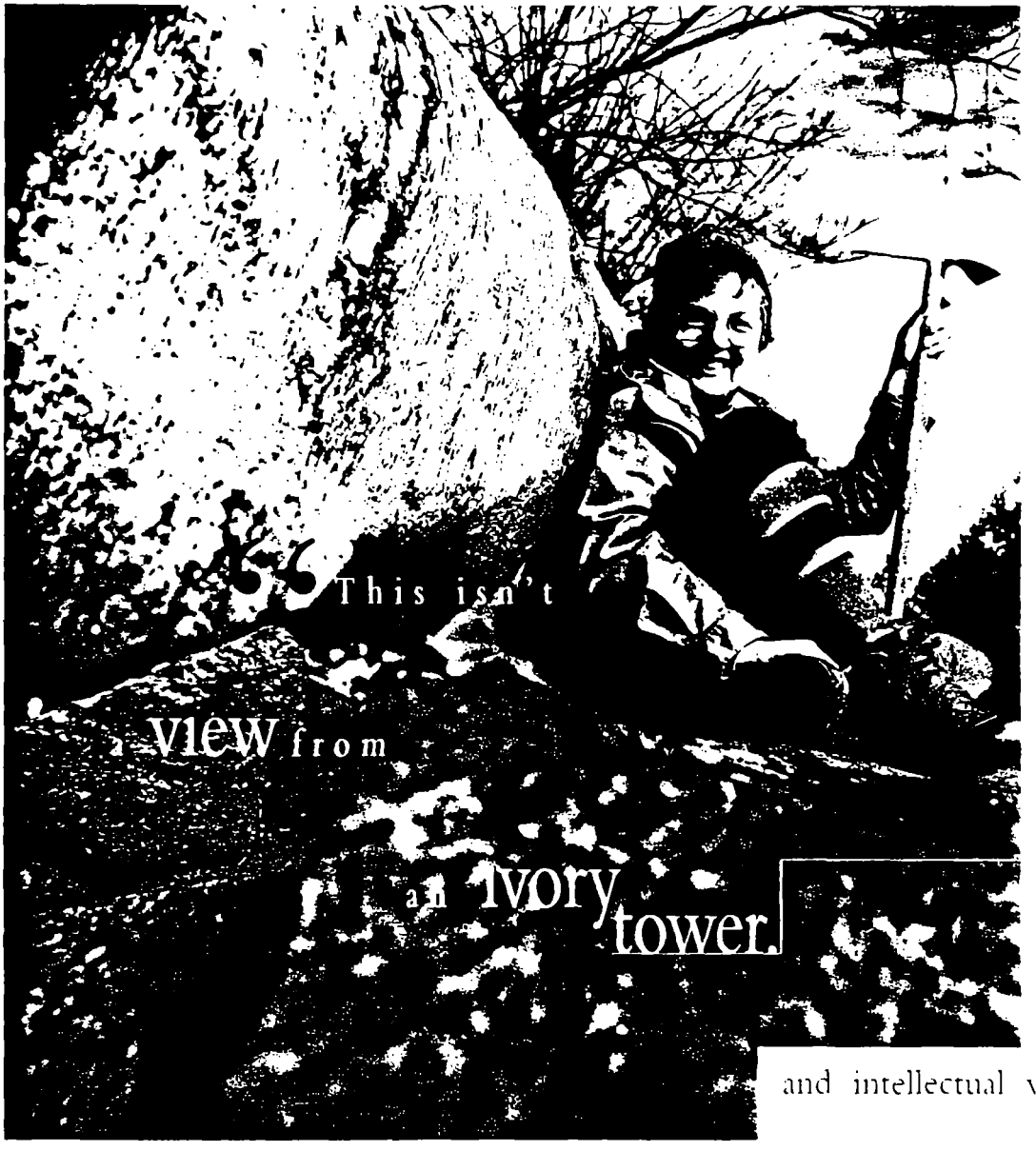

39 years @ IBM. IBM Fellow, IBM Research.
1995 President of the IBM Academy of Technology.
BA Mathematics, SUNY Albany; MA Mathematics,
U. of Michigan. Hometown: Peru, NY. Interests:
Mountain climbing, skiing, environmental issues.
Member: Croton Village Planning Board, various
professional organizations.

I'm an explorer in both the physical and intellectual worlds. My work at IBM has always provided exciting opportunities for exploring new terrain and challenges that test the limits of my creativity.

to compete, and to advance, on an equal basis. At IBM, we have found it in our best interest to offer assistance to all who are disadvantaged.

Our policies don't simply follow the law, they assume the spirit of the law. Affirmative action at IBM is a long-term investment in people and their communities. Our programs work to eliminate disadvantage, not to give anyone an advantage. They create a level playing field, where everyone has the opportunity to compete.

[illegible]

IBM sets goals by job groups. These goals are based on our populations in the feeder groups — those jobs from which we typically recruit to fill a particular position. For example, for entry-level positions, we look at the composition of the relevant labor market.

Goals are not quotas. In hiring and promoting, goals are flexible and require good faith efforts on the part of IBM managers. In meeting these goals, candidates are selected from among the best qualified, in a way that ensures IBM is hiring the best people possible.

FORWARD MOTION @ IBM

The percentage of minority employees at IBM has increased substantially in the past 30 years. In 1962, IBM was one of the first companies to join the federal government's "Plans for Progress" — a voluntary effort to aggressively promote and implement equal employment opportunity. At that time, our U.S. minority population totaled 1,250, or 1.5 percent of our workforce.

By the end of 1995, minorities had increased to more than 19,400 regular employees, or 18.2 percent. During the same period, the number of women employees grew to over 30,000, or 28.7 percent.

More than 3,500 women and more than 2,000 minority employees held management positions at the end of 1995. And of these, more than 2,000 were in senior management.

Of the 10,676 new employees hired in the U.S. last year, over 27 percent were minorities and over 32 percent were women. The numbers include more than 850 college graduates, of whom approximately 32 percent were minorities and 30 percent were women.

MENTORING PROGRAMS @ IBM

One of the most personal ways for management to demonstrate support for our workforce diversity goals is our mentoring programs. These programs encourage people from diverse backgrounds to enhance their career potential through the help of a seasoned professional.

The People @ IBM: Wayne Scott

"The adrenaline rush of responding to an emergency call and getting a system up and running are surprisingly alike. The things I do at work, and out of work, require creative solutions and give me immediate satisfaction. Both IBM and the ambulance corps offer the opportunity to be a part of something as exciting as it is important."

19 years @ IBM. MQSeries Consultant, Integrated Systems Solutions Corporation. BS Electrical Engineering, Newark College; MS Electrical Engineering, New Jersey Institute of Technology. Interests: Ambulance corps, woodworking, brewing beer. Member: Blooming Grove Ambulance Corps. Married with four children.

Mentoring is based on commitment to trust and confidentiality between participants. It is a way to receive both positive and negative feedback, in an informal and, most important of all, nonjudgmental environment.

While mentoring in itself is not new, women, minorities and the disabled have traditionally been "out of the loop," and, consequently, at a disadvantage. Mentoring is designed to eliminate this disadvantage once and for all.

"For us—for anyone—to be competitive, to be a leader, we must be sensitive to our employees' needs . . . and we must get their commitment and dedication in return."

— Lou Gerstner
Chairman and CEO, IBM

In the Community

At IBM, the word *community* refers to social networks and obligations. It is where we work, live and sell our products and services. Therefore, it's not surprising that IBM is involved in the community.

One of IBM's guiding principles is: "We serve our interests best when we serve the public interest." IBM is committed to improving the quality of life in the communities where IBM employees live and work. In 1995, the company's worldwide contributions of technology, people, services and cash to social, cultural and educational programs amounted to more than $65.3 million.

This commitment is reflected in a wide variety of programs, including the following:

COMMUNITY SERVICE ASSIGNMENT PROGRAM

Employees who want to contribute to community organizations may apply for the necessary time away from work through the Community Service Assignment Program. Placements can be requested by employees, nonprofit organizations or IBM. Most assignments are for one year with full IBM pay.

Since 1971, more than 1,000 IBMers have been granted assignments. The American Red Cross, Phoenix House, National Urban League and National Executive Service Corps are some of the organizations that have participated recently.

COMMUNITY SERVICE CAREER PROGRAM

The Community Service Career Program allows employees to work full-time with community-based organizations upon retirement from IBM. Retirees accepted into the program receive full IBM retirement benefits and a portion of their final salaries for up to two years.

Participants have accepted positions with organizations that address issues such as AIDS, illiteracy,

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As anyone who has encountered it knows, a "glass ceiling" isn't an architectural decoration. It's a metaphor for one of the most persistent forms of discrimination — the final barrier that separates women, minorities and people with disabilities from achieving the very top positions in a corporation.

Today, there is no policy, rule or institutional attitude at IBM that supports a "glass ceiling." While statistically in certain areas, the representation of minorities or women is not ideal, we've made significant progress. Continuing that progress is a strategic objective at IBM, and a central issue of workforce diversity. IBM is serious about eliminating any barriers and erasing any cultural artifacts that reinforce a "glass ceiling." Toward that end, we have established the following objectives:

- We actively support investing in people from diverse backgrounds.
- We create, through our hiring, a pipeline of those individuals.
- We establish an environment of quality and excellence conducive to full participation and personal and career growth.
- We demonstrate the willingness to expend the time and energy to develop people and provide them with opportunities commensurate with their abilities.

We the People @ IBM who make up this special section are proof of IBM's commitment to professional development. We not only represent IBM's diverse constituencies, many of us lead organizations that would rank, if independent, among the largest in corporate America.

Rod Adkins

15 years @ IBM. General Manager, Commercial Desktop Systems, Personal Systems Group. BA Physics, Rollins College; BS and MS Electrical Engineering, Georgia Tech.; Management Development Program, Harvard Business School. Interests: Karate, tennis, reading, Little League coaching. Member: Kappa Alpha Psi Fraternity-life member, Nat'l Society for Black Engineers-IBM Executive Sponsor, Southeastern Consortium for Minorities in Engineering Board. Married with two children.

Shakil Ahmed

27 years @ IBM. Director, Development Staff, Corporate Headquarters. BS Mechanical Engineering, University of Karachi; MS Metallurgy, Michigan State University; MBA, Pace University. Hometown: Karachi, Pakistan. Interests: Bridge, behavioral science. Member, Institute of Electrical and Electronics Engineers. Co-chair, IBM Asian Task Force. Married with two children.

Janet Andersen

23 years @ IBM. Assistant Treasurer, Corporate Headquarters. BS, Brown University; MBA, MIT Sloan Business School. Interests: In-line skating, hiking, reading, gardening. Member: Twin Lakes Water Works Board of Directors. "If there is a risk, I can make a difference."

Sharon Blasgen

27 years @ IBM. Associate General Counsel, Storage Systems Division. BA, Scripps College; JD U. of California at Berkeley - Boalt Hall School of Law. Interests: Her family. Member: California Law Employment Council Executive Committee, Peninsula Area General Counsels Assn, Institute of Electrical and Electronics Engineers. Married with two children.

Bruce Boggs

19 years @ IBM. General Manager, Southwestern Area, IBM North America. BS Computer Science, U. of South Carolina. Hometown: Greenville, SC. Interests: Mountain climbing, sailing, golf. Member: Dallas Citizens Council. Co-chair, White Male Task Force. Married with three children.

Kathy Butler

21 years @ IBM. Vice President, Worldwide Software Technical Support and Services, Software Group. BA Mathematics, College of Mount Saint Vincent. Interests: Her nieces and nephews, golf, skiing, piano playing, photography.

Harold Bailey

25 years @ IBM Vice President, Lotus Marketing Integration. BA Philosophy and BS Applied Mathematics, Brown University. Honorary Ph.D Humane Letters, Brown University. Interests: Tennis, reading. Member: Trustee Emeritus - Brown University, Director of Dunnock Community Center - Boston, The Black Men of Stamford, CT. Married with two children.

Brenda Bazan

14 years @ IBM. Vice President, Direct Marketing, Western Area, IBM North America. BA Art History, Princeton University. Interests: Culinary arts, oenophilia. "IBM allows me to pursue research, discuss and solve problems, as part of a team of incredibly bright people." Married with two children.

Diana Bing

19 years @ IBM. Director, Resource Development, Personal Systems Group. BA, SUNY-Brockport, M.Ed and M.A, Columbia University. Interests: Her family, gardening, travel, reading. Member: Business Advisory Council Chair, St. Augustine's College, Atlanta University Center; Board of Directors. Married with one child.

Carolyn Chin

2 years @ IBM Vice President, Strategic Projects, Corporate Headquarters. BS Engineering, Rensselaer Polytechnic Institute; MBA, Harvard Business School. Interests: Her daughter, origami, voluntary activities. Member: Committee for Economic Development, NYC Outward Bound, Fund for the City of New York, White House Fellows Assn., Rensselaer Council. Co-chair, Asian Task Force. Married with one child.

Michael Coleman

20 years @ IBM. General Manager, PC Servers, Personal Systems Group. BA, MBA and Ph.D, Gonzaga University. Interests: Hiking, camping, music. Member: Active with Boy Scouts, battered women and other charities. Co-chair, IBM People with Disabilities Task Force. Married with two children.

Raul Cosio

21 years @ IBM. General Manager, Manufacturing and Procurement, Server Group. BS Electrical Engineering, U. of Miami. Interests: Sports, travel. Member: U. of Miami President's Council. Co-chair: IBM Hispanic Task Force. Married with three children.

Earlene Cox

17 years @ IBM. Director, Federal Income Tax Operations, Corporate Headquarters. BA, U of North Carolina-Greensboro; JD, U of North Carolina-Chapel Hill. Interests: Competitive tennis. Member: Tax Executive Institute, Union Child Daycare Board of Directors - VP. "What I like best about business and tennis is how both require you to be an intelligent, aggressive risk taker." Married with two children.

Marianne Crew

22 years @ IBM. Vice President, Technical Support, IBM North America. U of Tennessee, Memphis State University. Interests: Family and friends, horseback riding. Member: Norwalk Hospital Board of Directors, Guiding Eyes for the Blind Area Coordinator. "I'm a very fortunate woman, truly blessed in this life, who is committed to helping those who have not been given the opportunities I have enjoyed." Two children.

Patt Romero Cronin

15 years @ IBM. Director, Enterprise Data Marketing, Software Solutions Division. BS, U of Santa Clara. MBA, Golden Gate University. Interests: Her family, kid's school, home projects. Member: Ministry of St. Isidore, Girl Scouts. "As my career advanced, I was able to keep the balance of work and family. People were so supportive after my first child, there was no question about having a second and a third." Married with three children.

Armando Garcia

14 years @ IBM. Vice President, Services, Applications and Solutions, IBM Research. BS Electrical Engineering, U of New Haven; MS, PhD Electrical Engineering and Computer Science, MIT. Interests: His children, collecting trains, diving, skiing. Member: Institute of Electrical and Electronics Engineers. Married with three children.

Jose Garcia

27 years @ IBM. General Manager, Consumer Desktop Systems, Consumer Division. BS Electrical Engineering, U of Tennessee; MS Electrical Engineering, U of Kentucky. Hometown: Cienfuegos, Cuba. Interests: Walking, SCUBA, golf. Member: National Hispanic Corporate Council. Co-Chair: IBM Hispanic Task Force. Married with three children.

Maria Garcia

22 years @ IBM. Senior Contracts and Negotiation Executive, Integrated Systems Solutions Corporation. BA, Barnard College; JD, Columbia University Law School. Member: American Bar Assn., New York State Bar Assn. "When I began my career, IBM already understood family issues. I had my first child and then another. Today, they are both in college. IBM always supported my decision to be a mother and a professional." Co-chair IBM Hispanic Task Force. Married with two children.

Barbara Ellis

22 years @ IBM. Director, Worldwide Fulfillment Project Office, Technology Group. BS Business Education, North Carolina A&T State University. MBA, Pace University. Interests: Reading, community service. Member: Operation Link-up Mentoring Program, Pace University-Dyson College Advisory Board, Delta Sigma Theta Sorority, Inc., National Assn. of Female Executives. Co-chair, IBM Women's Task Force. Married with one child.

Nancy Faigen

17 years @ IBM. Executive Assistant, Office of the Chairman and CEO, Corporate Headquarters. BA and MBA, Dartmouth College. Hometown: Palm Beach, FL. Interests: Her children, golf, skiing, aerobics. Married with two children.

Lorraine Fenton

28 years @ IBM. Vice President and Corporate Information Officer, Information Technology, IBM North America. BA Mathematics, Dickinson College. Interests: Reading, music, tennis, golf. Member, Marymount College Board of Trustees, Fairfield County Girl Scouts Corporate Board. "I feel lucky ... I've had many great opportunities, challenging jobs, supportive friends and family."

Carla Gude

2[illegible] years @ IBM. Director, System Software Structure, Software Group. BA Vassar College. MA, Cornell University. Interests: Family and friends, skiing, sailing. Member: Junior League of Poughkeepsie. Married with two children.

Satish Gupta

14 years @ IBM. Vice President, Technical Plans and Controls, IBM Research. BS Technology, Indian Institute of Technology, Kanpur, India; MS and Ph.D. Computer Science, Carnegie-Mellon University. Born, Delhi, India. Interests: Hiking, cooking, Ping-Pong. Member: Assn. of Computer Manufacturers, Institute of Electrical and Electronics Engineers. Married with one child.

Annette Haile

22 years @ IBM. Director, Solutions Design Delivery and Supply Management, IBM North America. BS Biology, Joint Carroll University. MBA, Baldwin Wallace College. Hometown: Gary, IN. Interests: Theater, Chinese martial arts, crafts. Member: Studio Theater Board of Trustees. Co-chair: IBM Black Task Force.

Ira Hall

11 years @ IBM. Director, International Operations, Corporate Headquarters. BS Electrical Engineering, Stanford University; MBA, Stanford University. Interests: Skiing, golf, sailing. Member: Southern New England Telecommunications Corp. Board of Directors; Jackie Robinson Foundation, Board of Directors; Alpha Phi Alpha Fraternity. "It's important to me to contribute simultaneously to my family, IBM and the community." Married with two children.

Nancy Hayes

18 years @ IBM. General Manager, International Operations and Business Process Reengineering, Corporate Headquarters. BA Finance, U. of Dayton; MBA, U. of Chicago. Hometown: Chicago, IL. Interests: Recording for the blind, volunteering with seniors, mentoring.

Dennis Hearon

29 years @ IBM. Vice President, Availability Services, IBM North America. BA Mechanical Engineering, City College of New York; MS Industrial Engineering, Polytechnic Institute of Brooklyn. Interests: Carpentry, SCUBA, photography. Member: Outward Bound USA Board; North Carolina Outward Bound School Board. "I'm curious about almost anything." Married with two children.

Ron Lauderdale

21 years @ IBM. Legal Counsel, AS 400 Division. BS, Ohio University; JD, Ohio State University. Hometown: Columbus, OH. Interests: His children, family, golf, history. Member: American Bar Assn., NY State Bar Assn., California Bar Assn., American Corporate Counsel Assn., Greenwich Country Day School Board of Trustees. "It's exciting being a part of the rebuilding of IBM." Married with two children.

Cathy Lewis

17 years @ IBM. Senior Director, Services Marketing, Lotus Development Corp. BA Mathematics, Grambling State University. Hometown: Minden, LA. Interests: Tennis, bicycling. Member: National Assn. of Female Executives. Elected one of five Women in Technology, *U.S. Black Engineer* Magazine, 1994. Married.

Charles Lickel

17 years @ IBM. Vice President, S/390 Software Development, Server Group. BS, SUNY-Albany. Interests: Hiking, swimming, stamp collecting. Co-chair: IBM Gay, Lesbian Task Force. Domestic partner.

Frank Jones

30 years @ IBM. Vice President, S/390 Worldwide Manufacturing and Site General Manager, Poughkeepsie. BS Electronic Technology, Virginia State University. Hometown: Brodnax, VA. Interests: Golf, fishing. Member: Alpha Phi Alpha Fraternity, Masons, Gift-in-Kind America Board of Trustees, Poughkeepsie Chamber of Commerce. Married with two children.

Jill Kanin-Lovers

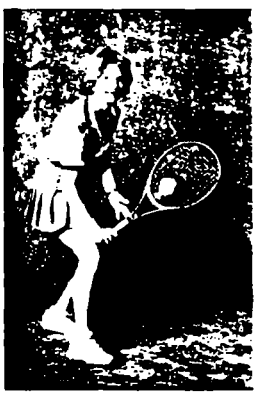
7 months @ IBM. Vice President, Human Resources - USA. BA, SUNY-Albany; MA, U. of Pennsylvania; MBA, Wharton Business School. Interests: Hiking, biking, murder mysteries. Member: American Compensation Assn. "I came to IBM when I realized that I was going to be part of a team that was not only reviving a great business but also a global asset." Married.

Kim Kispert

18 years @ IBM. Director, Business Development, IBM Credit Corporation. BA and MBA, Harvard Business School. Hometown: Detroit, MI. Interests: Reading, sports. Member: Family Centers Inc. Board, Horizons Student Enrichment Program Fundraising Committee. Married with two children.

Lip Lim

21 years @ IBM. Director, Worldwide Application Software Strategy, IBM Europe Middle East Africa. BS Electrical Engineering and Ph.D Computing Science, Imperial College, London University. Hometown: Singapore. Interests: Day hiking, art museums, wildflowers. Member: R. C. Ketteman High School Chapter of American Field Services. Co-chair, IBM Asian Task Force. Married with one child.



Allison Lowrie

21 years @ IBM. Director, Worldwide Channel Initiative, Worldwide Channel Strategy and Management, IBM North America. BA Biochemistry/Mathematics, Mount Holyoke College. Hometown: Littleton, CO. Interests: Tennis, skiing, hiking. Member: Elder of Presbyterian Church of Old Greenwich, CT.

Sharon Matthews

15 years @ IBM. Director, Human Resources, IBM Credit Corporation. BA, Purdue University; Graduate studies, Cornell University. Interests: Enjoys her children and family, her two cats, travel, reading mysteries. Member: Purdue Black Cultural Center Fundraising Committee. "I am family-oriented but energized by hard work and achieving results." Married with two children.

Dan McCurdy

13 years @ IBM. Director, Business Development, IBM Research.
BA History, Political Science, U. of North Carolina-Chapel Hill, summa cum laude.
Interests: SCUBA, running, weightlifting, art. Member: Board of Directors SIBond L.L.C., U.S. Competitiveness Policy Council, Phi Beta Kappa, Order of the Coif.
Co-chair: IBM Gay, Lesbian Task Force.
Domestic partner.

Cynthia Mitchell

22 years @ IBM. Director, Consulting and Systems Integration, Integrated Systems Solutions Corporation. BA Mathematics, Syracuse University. Interests: Her family, gourmet cooking, golf. Married with two children.

D'Jaris (D. J.) Moore

22 years @ IBM. Vice President, Marketing, K-12 Industry, IBM North America.
BS Biology, Bennett College; MS Biology, North Carolina A&T University. National Science Foundation Grant recipient.
Interests: Collecting art, swimming, travel.
Member: Black Women's Corporate Hall of Fame, Los Angeles YWCA Leadership Council, Atlanta Chapter of the March of Dimes Board of Directors.

Conchita Robinson

14 years @ IBM. Vice President, Software Marketing, IBM North America.
BA Mathematics, Newberry College.
Interests: Traveling, listening to music.
Member: American Kidney Fund Board, Teachers as Leaders, Inc., Junior League, Leadership Atlanta, Morehouse & Spelman Colleges mentor. Two children.

Anita Ross

22 years @ IBM. Vice President, Management Services, IBM Latin America.
BA (Honors) French & Classics, MA and Ph.D French Lit. & Linguistics, University of Manitoba, Canada. Interests: Culinary arts, photography, needlework. Member: Int'l. Personnel Assn., Latin American Personnel Assn., Catalyst. "IBM gives me the opportunity to work with a splendid array of talented people."

Chuck Savage

28 years @ IBM. Director, Custom Technology Offerings, IBM North America.
BS Chemistry, Savannah State College.
Interests: Old Testament study, pastoral care and counseling. Member: Leadership Atlanta, Omega Psi Phi Fraternity. "IBM is more than a 9-5 job and so is my pastoring work." Married with two children.

Carolyn Perkins

17 years @ IBM. Executive Assistant to General Manager Global Services. BA Economics Wesleyan University; MBA, U of North Carolina. Interests: Her family, UNC basketball, singing, tennis, Broadway musicals, the Internet.

Elizabeth (Eli) Primrose-Smith

11 years @ IBM. IBM Director, Worldwide Olympic & Sports Operations, Corporate Headquarters. BA English Lit., Stanford University; MBA, UCLA. Hometown: Baltimore, MD. Interests: Knitting, swimming, reading. Member: Los Angeles Sports Council Executive Board, American Athletes Development Foundation Executive Board, Women's Sports Foundation Advisory Board, American Basketball League Advisory Board. Married with one child.

Gerry Prothro

26 years @ IBM. Vice President and Chief Information Officer, Corporate Headquarters. BS Mathematics, Physics and MS Atomic Physics, Howard University; Executive MBA Program, Harvard Business School. Hometown: Atlanta, GA. Interests: Photography, flying, sports cars, tennis, swimming, jazz, contemporary art. Member: Howard University Board of Trustees, Co-chair: IBM Black Task Force. Married with three children.

Fernand Sarrat

21 years @ IBM. General Manager, Network + Centric Computing Marketing and Services. BA Economics and Psychology, Stanford University; MBA, Wharton School of Business, U of Pennsylvania. Hometown: San Salvador, El Salvador. Interests: Reading, tennis, family vacations. Member: Int'l House of Philadelphia Board of Trustees. Married with three children.

Raj Seksaria

8 years @ IBM. Principal and Competency Leader, Business Architecture, Worldwide Transformation Consulting Group. BS Chemical Engineering, Indian Institute of Technology, Kanpur, India; MS Chemical Engineering, U. of Kentucky-Lexington; MBA Finance, Marketing, U. of Chicago. Interests: Photography, travel. Member: Strategic Management Society. Married with one child.

Jim Stallings

11 years @ IBM. Director, Worldwide Sales, AS/400 Division. BS U.S. Naval Academy; MS, American University. Hometown: Raleigh, NC. Interests: His family, golf, running. Member: Enterprise Florida Board of Directors, U of North Florida Board of Directors. "IBM will let you go as far as you want to go. You're only limited by your willingness to work hard and your imagination." Married with two children.

Nancy Stewart

25 years @ IBM. Vice President, Global NetWorkStation Management, Integrated Systems Solutions Corporation. BS Mathematics and MS Management, MIT. Interests: In-line skating, theater, mountain biking. Member: Child's Play Board, Children's Theater Group, Institute of Electrical and Electronics Engineers, Coalition of Black Women, NAACP - life member, National Assn. of Negro Business & Professional Women.

Curtis Tearte

17 years @ IBM. Vice President of Marketing, Distribution Industry, IBM North America. BA, Brandeis University; JD, U. of Connecticut. Interests: Sports enthusiast, coaches daughter's basketball team. Member: Omega Psi Phi Fraternity - life member, Brandeis University Alumni Assn., U. of Connecticut Alumni Assn., NAACP. Married with one child.

John Thompson

25 years @ IBM. General Manager, Personal Software Products Division. BA, Business Administration, Florida A&M University; MS Management Science, MIT. Hometown: West Palm Beach, FL. Interests: Hunting, outdoor sports, jazz. Member: Kappa Alpha Psi Fraternity, North Indiana Public Service Company Board of Directors. Co-chair: IBM Black Task Force. Married with two children.

L. G. (Buzz) Waterhouse

22 years @ IBM. General Manager, Marketing and Business Development, Global Services. BS Finance, Penn State University; MBA Finance, Youngstown State University. Interests: Reading science fiction, travel and adventure. Member: Smeal College of Business at Penn State Board of Visitors, Conference Board's Council of Planning Executives, Co-chair: IBM American Indian Task Force. Married with two children.

Herbert Watkins

30 years @ IBM. Senior Site Location Executive, Charlotte, NC. BS Mathematics Physics, North Carolina Central University; MBA, Pace University. Interests: SCUBA, skiing, road running, classical music. Member: Queens College Board of Visitors, Alpha Phi Alpha Fraternity, 100 Black Men of America. Married with two children.

Irving Wladawsky-Berger

25 years @ IBM. General Manager, Internet Division. MS and Ph.D Physics, U. of Chicago. Hometown: Havana, Cuba. Interests: Baseball, the Olympics, jazz, cooking, the Internet. Member: Fermilab Board of Overseers. Co-chair: IBM Hispanic Task Force. Married with two children.

Greg VanErt

27 years @ IBM. Vice President, Human Resources and Skills Development, Global Services. BA Business & Economics, Ottawa University, Ottawa, KS. Interests: Sports cars, golf, fishing. Member: American Red Cross Board of Directors, Western CT. "After 25 years I had major surgery, was out for six months, and then resumed my career with a renewed appreciation for my co-workers, my manager and IBM's benefits." Co-chair: IBM People with Disabilities Task Force. Married with two children.

Donna Van Fleet

27 years @ IBM. Vice President, AIX Systems Development, RISC System 6000 Division. BS Mathematics, Muhlenberg College, Allentown, PA. Interests: Family, collecting art, literature, theater, ballet. Member: Open Software Foundation Board of Directors, Uniform Assn. Board of Directors, St. Edwards University School of Natural Science Advisory Board and Co-chair. Married with one child.

Anne-Lee Verville

29 years @ IBM. General Manager, Worldwide Education Industry, IBM North America. BA Mathematics, Smith College. Interests: Bicycling, cross-country skiing, reading. Member: Appointed by President Clinton to the National Skill Standards Board, Stanhome Corporation Board, National Alliance of Business, Duke University Fuqua School of Business Co-chair: IBM Women's Task Force.

Patricia Wolpert

2+ years @ IBM. General Manager, Northeastern Area, IBM North America. BS Business, Western Kentucky University. Hometown: Brandenburg, KY. Interests: Travel, golf, art, antique collecting. Member: Massachusetts Business Roundtable, Greater Boston Chamber of Commerce, NYC United Way Board of Directors, NYC Partnership. Married.

L. B. (Skip) Wyatt

24 years @ IBM. General Manager, Western Area, IBM North America. BS Mathematics, Accounting, Carson Newman College, Jefferson City, TN. Interests: Golf, chess, community involvement. Member: Detwiler Foundation Advisory Board, CA Chamber of Commerce Board of Directors. "I enjoy working with smart, passionate, special people. IBM is filled with those kind of people." Married with two children.

Al Zollar

19 years @ IBM. Tivoli Senior Vice President, Tivoli Systems Business Unit. MA Applied Mathematics, U. of California-San Diego. Hometown: Kansas City, MO. Interests: Reading, tennis, jazz. Member: SUCCEED Consortium External Advisory Board, Duke Computer Science Department Industrial Partners Program, North Carolina A&T Computer Science Department Advisory Board. Married with two children.

ssional Opportunity @ IBM: Working Mothers on the WMC

Worldwide Management Council (WMC), comprised of principal IBM division and corporate staff executives, is a forum to develop a common understanding of issues facing IBM and to discuss initiatives which will contribute to the company's overall success. These three women, all working mothers, are bers of the WMC.

Abby Kohnstamm

2 ½ years @ IBM. Vice President, Marketing Corporate Headquarters. BA, Tufts University; MA Education, New York University; MBA, New York University. Interests: Family activities, music, theater. Member: Association of National Advertisers Board, Overseers Arts and Sciences Board-Tufts University; IBM Credit Corporation Board of Directors; Ad Council Board of Directors. Married with two children.

Linda Sanford

20 years @ IBM. General Manager, S/390 Division. BA Mathematics, St. John's University; MS Operations Research, Rensselaer Polytechnic Institute. Interests: Family, piano, basketball. Member: Clarkson University Board of Directors. Co-chair: IBM Women's Task Force. Married with two children.

Robin Sternbergh

25 years @ IBM. General Manager, Distribution and Marketing, IBM North America. BA Economics, Pomona College; MBA, Harvard University Graduate School of Business Administration. Interests: Watching son play football and lacrosse, gardening, reading, the Internet. Member: American Institute for Managing Diversity Board of Trustees. "It never occurred to me that I couldn't achieve both motherhood and my career objectives. In fact, my first executive job came when I returned from maternity leave." Married with one child.

affirmative action, unemployment and substance abuse.

FUND FOR COMMUNITY SERVICE

Many IBMers volunteer their time to help nonprofit organizations or schools in their communities. To encourage employee volunteerism, IBM established the Fund for Community Service in 1972. Through this program, IBM contributes financial or IBM product grants to community organizations or educational institutions in which employees, retirees or their spouses are actively involved. Since its inception, grants for nearly 36,000 projects have totaled nearly $60 million. In 1995, IBM contributed $1.9 million in support of 1,252 projects around the U.S.

"American education is at a crossroads. Businesses must be involved in education, but they also profit from this involvement. Their presence is necessary because today's students are tomorrow's employees and customers. Our involvement is our investment in future employees and customers."

— D. J. Moore

Vice President of Marketing, K-12 Industry, IBM North America

SUPPORT FOR NONPROFIT ORGANIZATIONS

IBM employees serve as volunteers and company representatives on committees and boards of directors of various nonprofit organizations, including those that answer the needs of diverse groups.

What's more, in 1995, IBM participated in a number of conventions for nonprofit organizations involved with these groups.

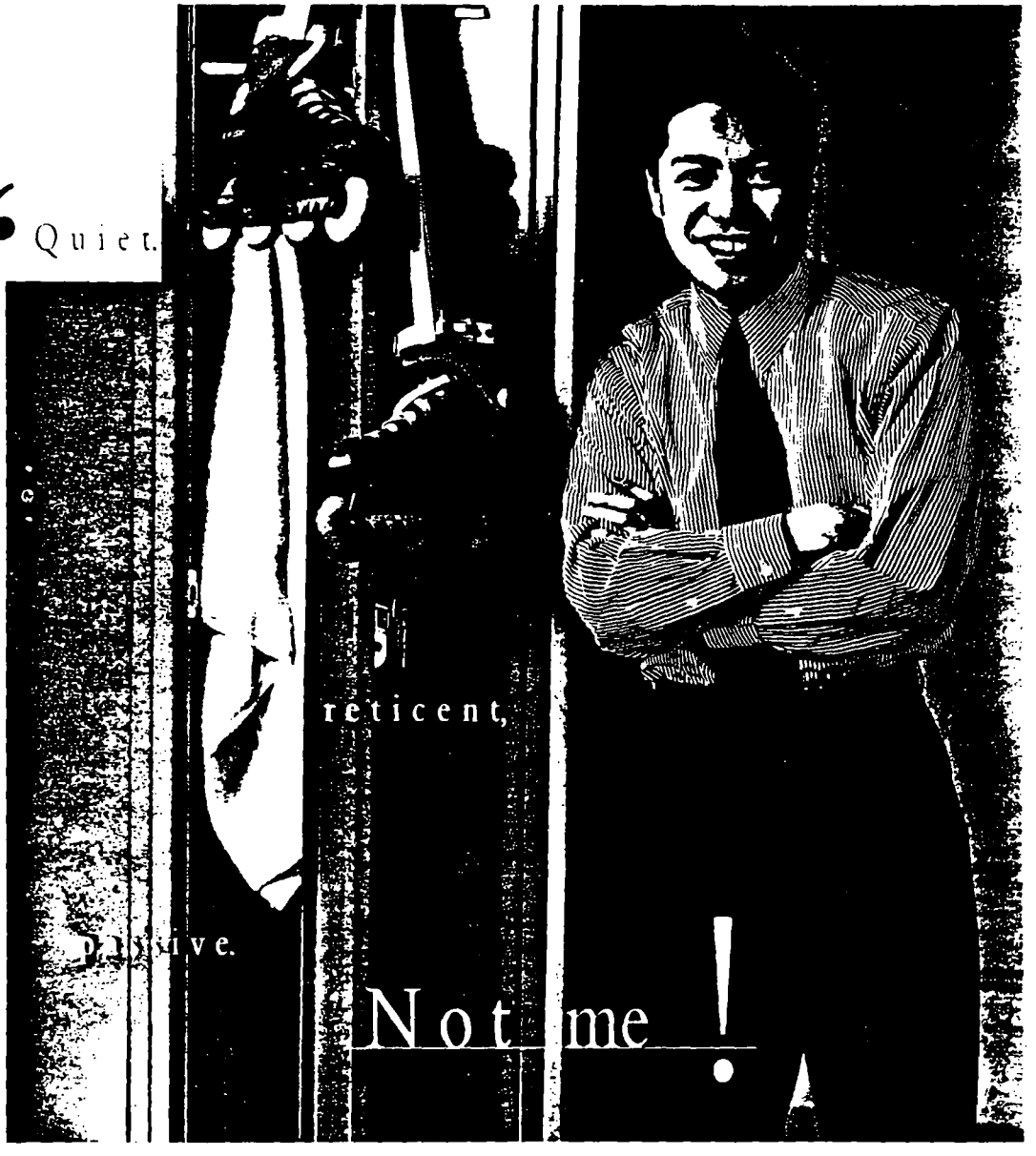
WORKFORCE DEVELOPMENT @ IBM

At IBM, we've long recognized the importance of helping communities prepare people for the workforce. This includes helping them acquire the entry-level skills necessary to find and hold a job. For example, in 1968, following riots in Los Angeles, IBM initiated a program to develop and support partnerships with community-based job training providers by donating equipment, supplies, technical services and training. Several years later, IBM launched a similar initiative to train and place people with severe physical disabilities as entry-level computer programmers.

Over the years, IBM expanded its partnership network to include more than 170 nonprofit job training centers that serve dislocated workers, the chronically unemployed and people with disabilities. These centers have prepared more than 67,000 individuals for successful integration in the labor market.

With more than a quarter century of involvement in workforce development, IBM has seen federal job training policy evolve in many

e People @ IBM: NELSON ENG



12 years @ IBM. Client Business Unit Executive, IBM North America. BS, New York University, Stern School of Business (magna cum laude). Hometown: New York City. Fifth generation Chinese-American. Interests: German sports cars, the arts, golf. Member: IBM Student Mentor Program, Beta Gamma Sigma Honor Society.

"I'm here to effect change ... starting with attitudes and finishing with stereotypes. IBM is a place where people define themselves and succeed on their own terms."

ways. Through all these changes, IBM continues to provide technology, training and other support to its network of job training center partners. Since the inception of the original program, IBM has contributed more than $26 million.

Today, as the country reevaluates public support for adult education and employment training programs, service providers must respond to new funding provisions, increased employer requirements, as well as technological changes in the workforce. Technology can and should be one of its most powerful tools to help program providers meet these new challenges. As a technology company with unique expertise in the field of adult training, IBM maintains its philanthropic commitment in this area.

In April 1995, IBM announced a competitive grant program available to public and private nonprofit organizations that provide adult education and job training. This program supports a limited number of projects that demonstrate highly effective and resourceful uses of technology and telecommunications in program design and implementation. Recipients selected through this initiative focus on innovative or experimental projects using technology to address job development, job placement, after-placement follow up and job creation. This new IBM initiative also focuses on disseminating these successful practices to other service providers.

SUPPORT OF MINORITY, WOMEN AND DISABLED BUSINESSES

IBM provides purchasing and marketing opportunities to minority-, women- and disabled-owned companies in all areas of our business. The result of this policy has been the successful execution of a highly diversified minority women disabled business development program. A program where we value the products, services, skills and innovations these individuals and firms provide to IBM.

Worldwide procurement oversees the minority women disabled supplier program. Since the 1980s, IBM has invested more than $3.5 billion through this program. In 1995, IBM purchased $389 million of products and services provided by minority, women and disabled entrepreneurs.

With continued focus and support within IBM, its subsidiaries and all IBM related organizations that purchase products and services, IBM will continue to do business with minority, women and disabled

The People @ IBM: Anne Annunziata

"The point is not what I can't do, but what I can."

How does a company show its support for an employee? Imagine a situation where a person because of her disability has had 12 surgeries in the past 10 years and not experienced a career setback. As long I can excel in my job, IBM will ensure that my disability doesn't get in the way of my opportunity for advancement."

17½ years @ IBM. Program Manager HR Benefits, HR - USA. BS Business Administration, Boston College. Hometown: Milford, CT. Interests: Needlepoint, enthusiastic spectator of tennis & football, community service. Member: Junior League of Raleigh.

The People @ IBM: Joseph Peplinski

"If the fish knew I was disabled do you think they would bite?

Disabled Employee of the Year, 1994, Industry Labor Council.
11 years @ IBM. Senior Associate Programmer, AS/400 Division. BS Therapeutic Recreation, U. of Wisconsin at LaCrosse; BS Computer Science, Winona State University. Hometown: Winona, MN. Interests: Green Bay Packers, fishing, time with family. Member: Rochester Area Disabled Athletics and Recreation. Married with one child.

We have to adapt to our environment. If wheelchairs and sand don't mix, don't fish the shore. But work environments can be made more accessible. When IBM sees an obstacle, they fix it."

entrepreneurs not only because it is a good practice, but because it is good business.

MINORITY BANKS AND INSURANCE COMPANIES

IBM has long supported the minority banking community. In 1995, the company invested in one-year certificates of deposits with banks participating in the Minority Banking Program. These investments provide program participants with capital to extend financing to businesses in their communities. In addition, IBM has engaged minority-owned insurance firms to underwrite about $182 million worth of IBM's group life insurance.

Expanding Educational Opportunities

Education has been a traditional focus of IBM philanthropy. In particular, the company has endeavored to make educational opportunities available for qualified minority students. Our objective has been to stimulate interest in K-12 and in higher education by emphasizing school reform and the importance of teaching science, engineering and computer sciences.

REINVENTING EDUCATION

In 1994, IBM restructured its corporate contributions programs to focus on the issue of school reform. "Reinventing Education" is a $25 million initiative that promotes systemic reform to ensure all children are prepared to meet world-class standards of achievement. Potential recipients were required to demonstrate their readiness for reform according to a number of criteria, including the establishment of high standards, continuous monitoring of student results and an emphasis on access to technology for disadvantaged youngsters and those with special needs.

Sites selected for this program all have new, higher standards for student achievement, especially tougher high school graduation requirements. All districts also have a track record of changing policy and regulations in order to foster school reform and restructuring. In addition to setting stringent criteria for broad-based and meaningful reform, IBM seeks locations in which there is a significant IBM presence in the local business community, as well as sites which represent the diversity of the nation. IBM believes it is essential to provide the necessary assistance to assure that all students reach the new standards.

PUZZLE PLACE

IBM is sponsoring a new PBS television show for children called *Puzzle Place*. This program, which began

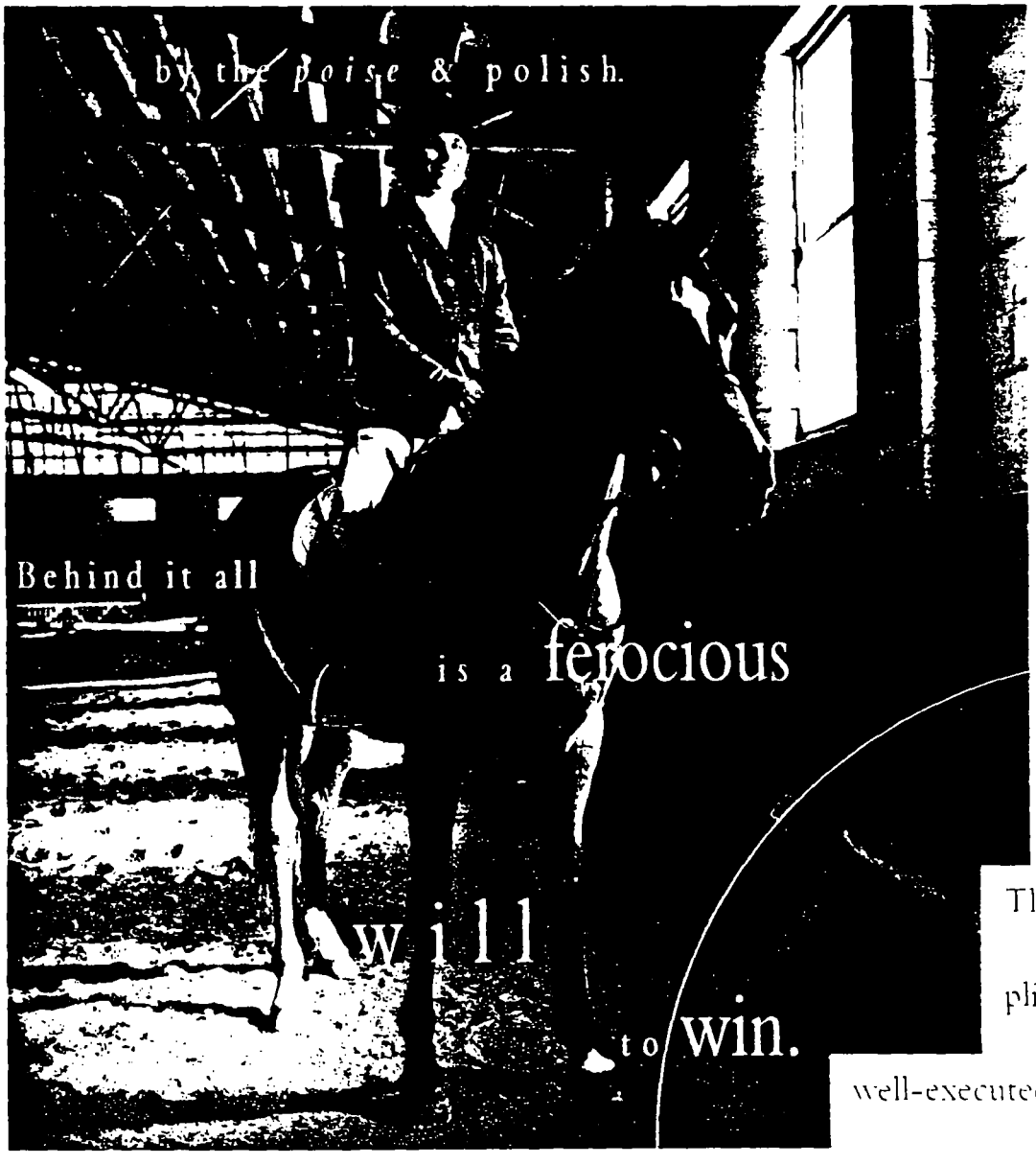
The People @ IBM: BENJAMIN ROSA

"No fear. No rules. No limits. Just like a day at the office. Day to day, I'm more of an entrepreneur than an employee of a big company. To win in the market requires sheer creativity, freestyling and a willingness to carve new trails"

12 years @ IBM. Manager, Financing Development/Brand Manager, Storage Systems Financing, IBM Credit Corp. BS Accounting, U. of Vermont; MBA New York University. Interests: Family, snowboarding, community service. Member: National Black MBA Association, Alpha Phi Alpha Fraternity. Married with two children.

People @ IBM: BRENDA LEE PETERSON

Don't be fooled



5 years @ IBM. Development Engineer, Microelectronics Division. BS Engineering Science, MS Engineering Mechanics, Penn State University. Interests: Competitive equestrian sports, woodworking, photography. Member: United States Combined Training Association.

The sense of accomplishment I feel from a well-executed movement is not unlike what I feel when a process I've developed improves product performance. Both dressage and engineering offer the deep satisfaction that comes from hard work and discipline. ”

airing in January 1995, features a multi-ethnic cast of kid puppets that encounter the "puzzling" social situations of everyday life. *Puzzle Place* encourages self-esteem, cooperation and respect for others.

HIGHER EDUCATION

In addition to support of K-12 education, IBM has a long-standing relationship with the United Negro College Fund (UNCF), an association that dates back to the Fund's inception in 1944. In 1991, IBM made a $50 million pledge, payable over ten years (1991-2000), to UNCF's Campaign 2000, a capital fund-raising campaign. In 1995, through this commitment, UNCF received almost $8000,000 of IBM technology for use in a major information management system — a network to link UNCF headquarters locations with its 41 member colleges and universities.

IBM has also worked with the National Action Council for Minorities in Engineering (NACME) and the Advertising Council for the public service announcement campaign "Math Is Power." The purpose of this program is to encourage minority elementary and high school students to pursue math and science courses. In addition, IBM provides annual support for NACME's corporate scholars program, which offers scholarship assistance to qualified students.

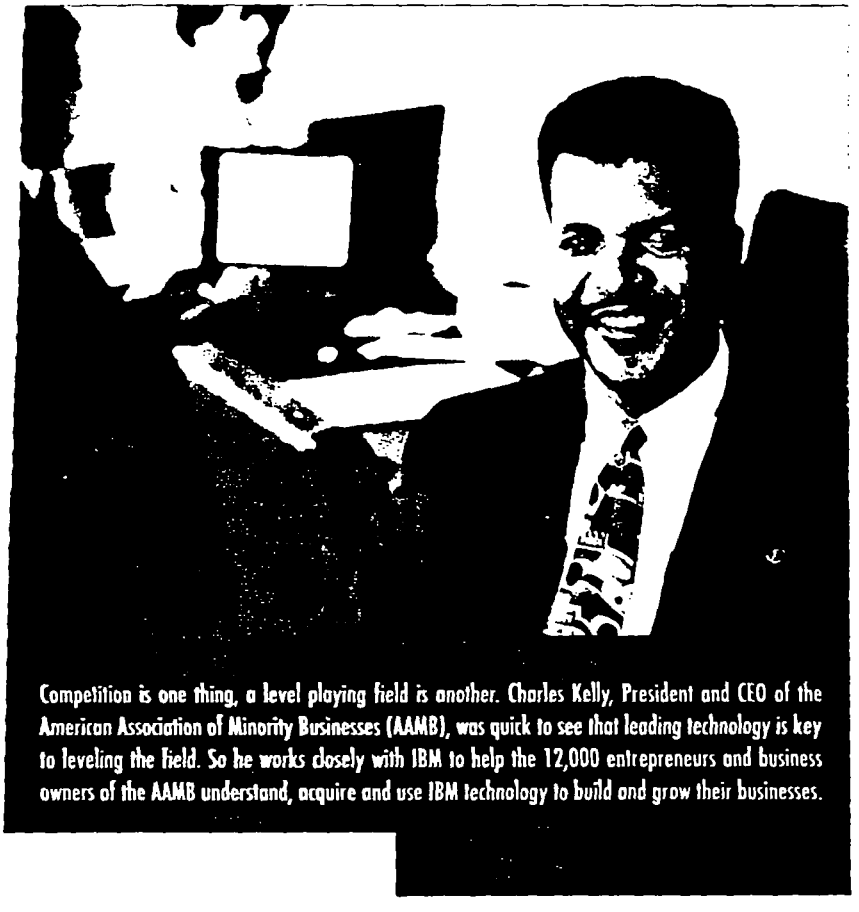
In 1976, IBM assisted in establishing the National Hispanic Scholarship Fund. Since that time, the fund has awarded over $25 million in undergraduate and graduate student funding. The company has also provided support to the American Indian Science and Engineering Society.

"I enjoy working with great people, special folks who are smart, driven and passionate about what they do. I don't know another business that places as high a value on diversity."

— L. B. (Skip) [illegible]
General Manager, Western Area, IBM Home Systems

FACULTY LOAN

The IBM Faculty Loan Program encourages employees to contribute to higher education in a very personal way by donating their time and skills. Qualified IBMers are granted leaves, at full salary, so they can teach, counsel or give professional support to colleges, universities and related educational institutions. Employees must be involved with programs supporting the needs of minority, women and disadvantaged students, or students with disabilities. Since 1971, IBM has provided more than 1,000 employees, each for a full



Competition is one thing, a level playing field is another. Charles Kelly, President and CEO of the American Association of Minority Businesses (AAMB), was quick to see that leading technology is key to leveling the field. So he works closely with IBM to help the 12,000 entrepreneurs and business owners of the AAMB understand, acquire and use IBM technology to build and grow their businesses.

academic year at no cost, to more than 250 institutions.

MINORITY CAMPUS EXECUTIVE PROGRAM

Another education initiative is the Minority Campus Executive Program. IBM executives assigned to the program contribute their expertise in areas related to the development and employment of resources critical to industry. The executive is a liaison to the college president, an advocate in the development of solutions and a role model for students. The executive continues to perform his or her regular IBM job while serving as a liaison to the institutions.

TECHNICAL ACADEMIC CAREER PROGRAM

Through the Technical Academic Career Program, IBM helps reduce the critical shortage of faculty in engineering and physical sciences. Technical professional employees who are accepted into the program begin full-time academic careers upon retirement. They receive full IBM retirement benefits and a portion of their final salaries for up to two years. Nearly 300 employees have started a second career in technical, teaching and managerial positions since this program was initiated in 1984. As a result, many retired IBMers now hold academic positions at universities and colleges across the country.

MATCHING GRANTS

Another way IBM supports educational institutions is with matching grants. The company matches on a one-to-one cash basis the contributions of active employees, and on a one half-to-one cash basis the contributions of retired employees to eligible universities, colleges, hospitals and cultural institutions.

In addition, eligible institutions have the option of selecting an equipment/software credit at IBM retail value at two or three times the cash match, depending on the type of organization.

IBM matches an individual's contribution of up to $5,000 per institution per calendar year, and up to $10,000 in total contributions per employee or retiree per calendar year.

K-12 MATCHING GRANTS

IBM assists active and retired employees who wish to contribute equipment and software to the eligible K-12 schools of their choice. The donated equipment and or software is used to improve the quality of education in math, science, reading language skills or computer literacy, or to benefit the local community.

Requests are submitted by one or more IBM donors who provide 20 percent of the retail price of a particular prepackaged configuration. IBM contributes the balance. Gifts are limited to $5,000 per eligible donor per school per year.

Work/Life Programs @ IBM

Significant changes in how we live, coupled with major demographic shifts, are changing the nature of the workforce. The demands of work versus the obligations of personal life has become a prominent business issue, linked to long-term competitiveness and the overall health of a business.

These new social conditions are forcing businesses to examine the business culture itself. At a time when more than half of all married couples in the U.S. are dual-income families, and many women, with children under the age of one, work outside the home, the separation of work from personal life is no longer feasible. Particularly when it's estimated that some 76 million "baby boomers" began turning 50 in 1996. Many of them have the dual responsibilities for taking care of both young children and aging family members.

I got my first impression of IBM when I was in the third and fourth grade... learning to read with a Science Research Associates (SRA) module. I remember reading IBM on the material and thinking it was a place where really smart people...

— [illegible]

Manager, Financing Development; Brand Manager, Storage Systems, IBM [illegible]

IBM's work/life programs are a response to a new reality where:

- Sixty-two percent of IBM employees are part of a dual-income couple.
- Thirty-two percent of IBM employees have children who need care and supervision.
- Four percent of employees are single parents.
- Thirty-two percent of employees have some responsibility for the care of an elderly relative or other adult.

Our work/life programs offer employees a means to balance the

Margaret Smith is a mother, a lawyer, the founder of a business, the President of the National Association of Women Business Owners, and an IBM customer. It's innovators and risk takers like Ms. Smith who are not only changing the face of business, but in fact, how business is done.

sometimes seemingly incompatible choices between business goals and personal responsibilities. And they are tools to help managers achieve their business goals without undue stress.

Work/life policies and programs help attract and retain the best employees, while maximizing their contribution to the company. These programs bring both direct and indirect benefits by creating flexible work environments responsive to individual needs and responsibilities and by stimulating the development and expansion of community programs.

Research has shown that employees who are given greater flexibility — in respect to their hours and conditions of work — have reported more job satisfaction, increased job productivity, higher morale and motivation and greater loyalty to IBM. What's more, people must not be made to feel that they are less committed to their careers when they use such programs.

IBM work/life programs include: child care and elder care resource and referral, adoption assistance, leaves of absence, flexible working arrangements, personal choice holidays, flexible vacation scheduling and an Assessment, Brief Counseling and Referral (ACR) program to help employees and their families with a wide range of personal problems.

By dealing proactively with issues that are possible impediments to employee attendance, productivity and loyalty, IBM work/life programs offer positive solutions that advance the company's interests. In addition, they contribute to measurable results, such as productivity, as well as intangibles, such as morale. The simple fact is, giving employees more control over their time to accommodate their needs helps IBM keep and inspire the best in our employees.

INDIVIDUAL WORK SCHEDULES

Under the expanded Individualized Work Schedules Program, employees are able to begin their workday up to two hours before, or two hours after, the normal location start and stop times. This provides them with a four-hour window of flexibility. In addition, employees may adjust their total hours worked to take a minimum of 30 minutes, or a maximum of two hours to accommodate any personal choice activities that can be handled only during the middle of the day. This window of time can be used for such personal activities as attending a child's play, visiting an elderly relative or participating in a sports activity. This program is contingent upon management approval and the company's business needs.

LEAVES OF ABSENCE

When employees need to be away from work for an extended period of time, they may take a personal leave of absence for up to three years. Although the Family and Medical Leave Act of 1993 provides eligible employees with up to 12 weeks of unpaid job-protected time off for certain family and medical reasons, IBM has been granting leaves of absence since 1956.

Typically, employees have taken time off to be home after the birth or adoption of a child or to cope with a family illness. However, leaves may be requested for a variety of reasons, including education and community service.

IBM also offers unique flexible work arrangements that provide full-time employees the opportunity to reduce their workweek for a broad array of personal needs, such as dependent care responsibilities, "once in a lifetime" opportunities or other individual needs.

[redacted]

— [redacted]

To help employees transition to retirement, those who are eligible or will become eligible to retire within a year may request a personal leave of absence of up to one year. During that time, employees may work part-time at IBM or work for another company, provided there is no conflict of interest, with full earnings and service credited toward retirement.

WORKPLACE FLEXIBILITY

Employees can perform their work at home or in another off-site location—with computers and other technology—to meet the demand of their day-to-day business. This

It's a truism that "if you want to do something right, do it yourself." When Teresa Gonzales McBride couldn't get the help she needed, she and some colleagues started their own support system. Today McBride and Associates, with a staff numbering in the hundreds and a solid IBM electronic infrastructure, is providing seamless, flexible solutions around the country. While ambition and initiative don't have one face, Teresa is measuring herself by a single standard — her own.

flexibility provides them with opportunities to balance work and personal needs.

PREPARING FOR RETIREMENT

Today, individuals can no longer rely on either their employers, or the government alone to secure their financial future. More than ever, employees are becoming active partners with their employers and the federal government to develop comprehensive financial strategies.

IBM Personal Financial Planning includes educational seminars, individual consultations and related services to help employees plan for their future.

The following are examples of the types of services associated with this offering:

- An initial consultation to discuss "life objectives," to assess current financial situations and recommend a course of action.
- A detailed written analysis that recommends how to manage finances, based on personal objectives. One-on-one sessions with a financial professional are available as part of this service.
- Seminars, offered locally at IBM divisions, sites and locations.

LIFEWORKS

IBM has been a national leader in providing employees information on resources in their community on child and elder care programs. In 1984, IBM established the IBM Child Care Referral Service (CCRS), the first national child care resource and referral service. This was followed by the Elder Care Consultation and Referral Service (ECCRS) in 1988, the first nationwide corporate program to address elder care issues. Over the years these services have been expanded to include resources and consultation for adoption, education and adult disabilities.

Employees today face ever-increasing challenges in managing their job and personal responsibilities. In 1995, IBM announced it combined its Child Care Referral Service and Elder Care Consultation and Referral Service into a single program called LifeWorks. This program provides employees with the support they need to balance their work and personal lives over their life cycle, helping with child and elder care needs, but also helping employees with parenting issues and caring for themselves. The service offers telephone consultations referrals and consumer information.

LifeWorks is delivered to employees through a combination of telephone counseling and contact with networks of local community-based specialists. LifeWorks has a network of 250 child care and 175 elder care affiliates across the country, available to work with IBM employees to satisfy their dependent care needs. Since these programs began, over 113,000 IBM families have used the child care services and over 56,000 employees and retirees have used the elder care services.

IBM FUNDS FOR DEPENDENT CARE INITIATIVES (FDCI)

In 1989, IBM established the IBM Funds for Dependent Care Initiatives (FDCI) to further respond to employees' work and family balance needs. Over a five-year period, 1990 through 1994, IBM invested $25 million in more than 500 projects designed to increase the supply and enhance the quality of child care and elder care services in communities where IBM employees live and work. Last year, the FDCI was replenished at a level of $50 million to cover the years 1995-2000.

[illegible] IBMers worried about who's watching their children. I can [illegible] I'll be able to leave early to attend their child's [illegible] to the doctor.

— [illegible]
Chairman and CEO, IBM

Through this fund, IBM has developed programs addressing child care centers, family day care, school-age programs and backup care for children and adult day care, in-home services, respite and intergenerational programs for elders. A strong focus has been on provider training and a commitment to quality on the part of all of the programs supported through FDCI.

THE AMERICAN BUSINESS COLLABORATION FOR QUALITY DEPENDENT CARE (ABC/QDC)

Through FDCI, IBM participated in the American Business Collaboration

for Quality Dependent Care (ABC/QDC). Launched in September 1992, ABC/QDC involved 136 organizations investing a total of $25.4 million. In two years, this had grown to 154 organizations with an investment of $27 million. More than 300 dependent care programs were developed in 45 communities through the investments of the ABC/QDC.

his is [illegible] tually be [illegible] n. All [illegible]

— [illegible]
[illegible] IBM North America

In 1995, the ABC QDC announced it had gained a commitment to invest an additional $100 million in dependent care programs between the years 1995-2000. IBM continues as one of 21 "champion" companies that serves as a leader of the ABC QDC. Champions are national companies that have made a long-term commitment to invest in communities and to provide overall direction for the ABC/QDC. IBM's involvement in the ABC/QDC provides a unique opportunity to leverage our resources with others, while improving the delivery of services to our employees.

SPECIAL CARE FOR CHILDREN ASSISTANCE PLAN

Under the Special Care for Children Assistance Plan, IBM provides disabled children with coverage for expenses not reimbursed under IBM's medical plans. The maximum lifetime assistance per child (up to 23 years of age) is $50,000.

LIFE PLANNING ACCOUNT

The Life Planning Account was recently established at IBM to provide financial assistance to employees, retirees and their eligible dependents when they complete a course or program that helps promote a healthier lifestyle. Programs eligible for financial assistance can cover such subjects as physical fitness, weight management, nutrition, stress management, cancer prevention, cardiovascular health and financial planning.

IBM Principles

IBM bases its business decisions on eight fundamental operating principles:

- The marketplace is the driving force behind everything we do.
- At our core, we are a technology company with an overriding commitment to quality.
- Our primary measures of success are customer satisfaction and shareholder value.
- We operate as an entrepreneurial organization with a minimum of bureaucracy and a never-ending focus on productivity.
- We never lose sight of our strategic vision.
- We think and act with a sense of urgency.
- Outstanding, dedicated people make it all happen, particularly when we work together as a team.
- We are sensitive to the needs of all employees and to the communities in which we operate.

IBM has established 26 diversity councils around the world comprised of men and women representing a variety of backgrounds, cultures and work and life experiences. The councils' vision is to build on IBM's diverse workforce, resulting in all employees realizing their full potential and thus enhancing business achievement. The San Jose, CA, Diversity Council (pictured) was the first in IBM, formed in 1992.

First Row (from left to right): **Kathy Merkin**, Field Data Analysis Manager; **Ira Dearing**, Equal Opportunity & Diversity Program Manager.
Second Row: **Maria Magana**, DB2 Systems Test Manager; **Ed McCanless**, Senior Engineer, OEM-Large Accounts.
Third Row: **Sofia Laskowski**, Manager, Head Program Office; **Margarita Chieng**, Manager, SORT Product Manager; **Glenn Larnerd**, Site General Manager, IBM San Jose.
Fourth Row: **Ron Grogan**, Human Resource Operations Manager; **Monte Anglin**, Director, Future DAS Microcode; **Bill Morrison**, Manager, Materials Lab.
Fifth Row: **Raymond Wynn**, Program Manager; **William Johnson**, Manager, HGA/HSA/HDD Launch.

Not Shown: **Dave Arken, Eugenie Betzer, Henry Chang, Barbara Hill-Brown, Bonnie Paul, Gina Whitney.**

nited States Instruction No.4

M's employees represent a talented and diverse workforce. Achieving the full tential of this diversity is a business priority that is fundamental to our mpetitive success. A key element in our workforce diversity programs is IBM's ıg-standing commitment to equal opportunity, a commitment based on sound siness judgment and a fundamental belief in respect for the individual.

Business activities such as hiring, training, compensation, promotions, nsfers, terminations and IBM-sponsored social and recreational activities are nducted without discrimination based on race, color, religion, gender, sexual entation, national origin, disability, age or either Vietnam-era or Special sabled veteran status. These business activities and the administration of IBM nefit plans comply with all applicable federal, state and local laws, including ose dealing with equal opportunity. IBM also makes reasonable accommodation disability and religious observance.

To provide equal opportunity and affirmative action for applicants and ıployees, IBM carries out programs on behalf of women, minorities, people th disabilities, Vietnam-era veterans and Special Disabled veterans. This includes treach as well as human resource programs that ensure equity in compensation d opportunity for growth and development.

In addition, the IBM work environment must be free from harassment ed on sex or sexual orientation, race or ethnic origin, religion, age, disability, veteran status. In respecting and valuing the diversity among our employees and those with whom we do business, managers are expected to ensure a work vironment free of all forms of discrimination and harassment.

Effective management of our workforce diversity is an important strategic jective. Every manager in IBM is expected to abide by this policy and uphold company's commitment to workforce diversity.

ıis V. Gerstner, Jr.

ıairman and Chief Executive Officer
M Corporation

This brochure describes the ways in which IBM is committed to diversity. I hope one point that became clear as you read the brochure was the wealth of diverse people in senior management, and at all levels of IBM. A "glass ceiling" and attitudes leading to such barriers will not be permitted.

IBM has diversity firmly rooted in its heritage. This heritage helps us to see workforce diversity as an evolutionary process. We have made significant progress but the task is not yet complete.

We have a strong team committed to workforce diversity. That team includes IBM's board of directors, management, employees and the human resource network. IBM's global workforce diversity theme, "None of us is as strong as all of us," helps us focus on opportunities for employees and marketplace progress.

The ties that bind us are stronger than the issues that divide us. And the most important tie is the opportunity to be on a diverse team that wins in a diverse marketplace. Racism, sexism, ageism, bias against the disabled, and homophobia must be kept from influencing our workplace, our productivity, and our competitive edge.

There's only one "ism" on which we need to focus — consumerism. Every citizen in every country is a potential consumer. Our customers must know that people like themselves work here, are respected and are successful.

In the final analysis, workforce diversity is about real change in our corporate culture. It's about replacing old assumptions. With our individual and collective commitment to diversity, by offering all of our constituencies the opportunity to attain their full potential, and the rewards that come with it, we will provide our employees, our customers, and our shareholders the very best chance to succeed.

Ted Childs

J. T. (Ted) Childs, Jr.

Director, Workforce Diversity
IBM Human Resources-USA

ı Ongoing Commitment @ IBM

tside Recognition

s commitment to workforce diversity has been widely recognized by many ıonizations and publications. Acknowledgement in the form of awards and ings, has come from a broad variety of organizations and publications that ocate diversity. The following list

MEN

e Women's Bureau Honor Roll 95; National Foundation Women Business Owners - stinguished Patron 1995; talyst Award American siness Collaboration for Quality pendent Care (1993); National uncil of Jewish Women Founders ard (1992; *Hispanic Engineer* gazine - Top 10 1992, 1996)

ORITIES

ıerican Association of Minority sinesses - Affinity Award 1995; tional Science Foundation versity Award (1995; Leadership ard, National Minority Supplier velopment Council (1994); *ıority Engineer* Magazine - Top 10 92); National Minority Business uncil/Outstanding Corporate siness Award (1991)

CKS

ck Collegian Magazine Top 100 ıployers (1995); Black Engineer the Year Award (1990, 1994, 1995, 96); National Society of Black gineers Employer of Choice (1989-1994); *Black Professional* Magazine - Fabulous 50 in Reader Survey (1993); *Black Enterprise* Magazine - 3 of 40 Top Executives (1993); *Black Enterprise* Magazine "Best Places to Work" survey (1982-1995); National Eagle Leadership Institute Award (1995)

HISPANICS

Hispanic Business Magazine - Best Place to Work Top 20 (1993-1995); *Hispanic* Magazine Top 100 (1990-1996); *Vista* Magazine - Top 50 Employers (1995, 1996); Ser's Amigo of the Year Top National Award Hispanic Job Training (1992)

GAYS/LESBIANS

Cracking the Corporate Closet - Best Companies for Gays/Lesbians (1995)

PEOPLE WITH DISABILITIES

Easter Seal Society Award for Corporate Leadership (1995); *CAREERS & the disABLED* Magazine - Top Company/Reader Survey (1992-1995); *CAREERS & the disABLED* Magazine - Employer of the Year (1992, 1993); The Foundation for Exceptional Children's "Yes I Care!" Award (1991)

AMERICAN INDIANS

National Center for American Indian Enterprise Development - The First American Enterprise Award (1995)

AGING

U.S. Administration on Aging-American Business Collaboration for Quality Dependent Care (1993); U.S. Administration on Aging - Business and Aging Overall Achievement Award (1991); Business of the Year Award/American Society on Aging (1991)

WORK/LIFE

Working Mother Magazine 100 Best Companies - Top 10 (1988-1995); Kathleen McDonald Award/Family Resource Coalition (1994); *HR Executive* Magazine - Benchmarking article; Family & Work Institute/Family Friendly Index (1991); Labor Investing for Tomorrow (1990)

The responsibility of IBM executives and IBM employees for Workforce Diversity is covered in IBM's Report on Executive Compensation which is available from the office of the Director of Workforce Diversity at IBM's headquarters in Armonk, New York.

Employment Data for U.S. Locations 1993-1995

	Total Employees	Men	Women	Total Minorities	Black	Asian	Hispanic	American Indian
Officials & Managers	16,460	12,906	3,554	2,236	1,178	579	431	48
	14,273	11,119	3,154	1,940	984	540	377	39
	15,094	11,500	3,594	2,027	1,017	555	403	52
Professionals	70,082	51,090	18,992	12,172	4,398	5,744	1,883	147
	55,947	40,549	15,398	9,437	3,221	4,554	1,530	132
	51,877	37,459	14,418	9,334	3,200	4,525	1,486	123
Technicians	17,711	15,470	2,241	3,055	1,525	623	832	75
	15,353	13,546	1,807	2,659	1,284	619	694	62
	13,438	12,114	1,324	1,998	873	417	663	45
Marketing	11,127	7,674	3,453	1,816	888	520	362	46
	8,979	6,418	2,561	1,456	675	448	298	35
	13,496	9,750	3,746	2,153	1,051	655	394	53
Office & Clerical	13,491	4,384	9,107	3,528	2,440	349	710	29
	11,549	4,058	7,491	3,213	2,263	325	593	32
	9,801	3,456	6,345	2,717	1,904	285	500	28
Craft Workers	8,355	6,258	2,097	1,728	710	435	571	12
	2,273	1,859	414	499	205	109	180	5
	1,464	1,316	148	274	128	87	57	2
Operatives	11,212	6,182	5,030	6,726	4,296	1,653	761	16
	18,043	10,849	7,194	8,423	4,020	3,047	1,323	33
	16,261	8,923	7,338	8,034	4,126	2,794	1,077	37
Total	148,438	103,964	44,474	31,261	15,435	9,903	5,550	373
	126,417	88,398	38,019	27,627	12,652	9,642	4,995	338
	121,431	84,518	36,913	26,537	12,299	9,318	4,580	340

Note. Table reflects all regular and complementary U.S. employees. The company's complementary workforce includes various workers hired under temporary, part-time and limited-term employment arrangements

Reconceptualizing the Legal Debate Concerning Non-Remedial Affirmative Action in Higher Education

Scott R. Palmer
May 1997

Preliminary Draft
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Reconceptualizing the Legal Debate Concerning Non-Remedial Affirmative Action in Higher Education

I. Introduction

In *Regents of the University of California v. Bakke*,[1] Justice Powell, in an opinion that came to be known as the opinion of the Court, held that securing the educational benefits that flow from diversity in higher education is a compelling interest that can constitutionally support race-based actions.[2] As a result, public and private universities across the country have for the last two decades adopted this diversity rationale as their primary justification for affirmative action programs in student admissions.[3] However, in *Hopwood v. Texas*,[4] the Fifth Circuit Court of Appeals rejected the notion that promoting educational diversity is a compelling interest, striking down the affirmative action admissions program at the University of Texas School of Law. *Hopwood* sets a precedent that, if extended nationally, threatens the viability of nearly all affirmative action programs in higher education. This paper is meant to serve as an important first step in rebutting *Hopwood* and making the case for affirmative action in higher education by providing a policy framework for reconceptualizing the legal debate concerning the role of diversity in higher education and applying that framework to the issue of affirmative action in student admissions. I conclude that there is likely a strong case to be made for affirmative action in higher education based on the diversity rationale, but much more needs to be done and done quickly both to use educational diversity more effectively and to evaluate it more rigorously.

II. A Policy Framework for Analyzing the Diversity Rationale: The Case of Affirmative Action in University Admissions

This paper argues that in order to effectively make the case for affirmative action in higher education based on the diversity rationale, it is first necessary to reconceptualize the legal debate into a policy-oriented framework. The model I have chosen is relatively simple: Policy engineering can be

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[1] 438 U.S. 265 (1978).

[2] *See id.* at 312-15 (opinion of Powell, J.).

[3] *See, e.g.*, Tanya Y. Murphy, *An Argument for Diversity Based Affirmative Action in Higher Education*, 95 Ann. Surv. Am. L. 515, ___ (1995) ("Although affirmative action in higher education was created specifically for remedial purposes, today the primary, and perhaps only, justification for the retention of affirmative action programs is educational diversity.").

[4] 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).

divided into four interrelated parts: (1) goals, (2) objectives, (3) strategy, and (4) design.[5] Each part is linked to the next by evidence and analytical presumptions (i.e., goals dictate objectives, objectives dictate strategy, etc.). Understood in these terms, promoting racial diversity at universities is not an end in itself; rather, it is an *objective* designed to further various *goals* of higher education. In order to achieve that *objective*, a university may institute a given *strategy*, such as race-based affirmative action in admissions, which in turn has a certain *design*, such as *Bakke's* "plus" factor design in which race is "but a single though important element."

Using this framework to reconceptualize the legal debate concerning non-remedial affirmative action in higher education clearly identifies the possible arguments in support of racial diversity and highlights what needs to be done to make those arguments most effectively. The remainder of this paper applies the policy framework described above to the issue of affirmative action in university admissions. The following chart summarizes the analysis that follows. Each column indicates a different line of argument in support of non-remedial affirmative action in higher education. The darker cells indicate the weakest link in each column.

[5] *See* Philip Zelikow, *Foreign Policy Engineering: From Theory to Practice and Back Again*, 18 Int'l Security 143 (Spring 1994) (dividing policy engineering into seven interrelated parts including the four discussed here).

Policy Analysis of Non-Remedial Affirmative Action in University Admissions

The Model	I	II	III	IV
Goals/Interests of Higher Education	Promote teaching and learning	Enhance civic values	Remedy the lack of essential-service providers in under-served communities	Remedy racial stratification in society • *Not compelling in most cases*
Evidence Linking Objective to Goals (possible evidentiary links)	Direct evidence: Racial diversity increases substantive learning and/or cognitive development Indirect evidence: Diversity of perspectives promotes problem solving; all relevant perspective are valuable; racial perspectives are often relevant • *Lack of substantial evidence*	Direct evidence: Racial diversity promotes tolerance, understanding, open-mindedness, etc. Indirect evidence: Interaction among different peoples promotes tolerance (contact hypothesis) • *Lack of substantial evidence*	Minority graduates are more likely to practice in under-served communities (e.g., medical school graduates)	Minority graduates of prestigious institutions are more likely to serve at advanced levels in society Minority graduates are of instrumental value in some positions in society (e.g., medical school graduates)
Objective	Promote racial diversity in the student body (ensure a "critical mass" of minority students)	Promote racial diversity in the student body (ensure a "critical mass" of minority students)	Promote racial diversity in the student body (increase minority representation)	Promote racial diversity in the student body (increase minority representation)
Strategy	Race-based affirmative action in admissions	Race-based affirmative action in admissions	Race-based affirmative action in admissions • *Race-neutral means available*	Race-based affirmative action in admissions
Design	Race used as a single "plus" factor	Race used as a single "plus" factor	Race used as a single "plus" factor	Race used as a single "plus" factor

A. Goals of Higher Education

Goals are defined here as the non-operational *interests* that drive policy choices.[6] In *Hopwood v. Texas*, the Fifth Circuit rejected the diversity rationale for affirmative action in higher education without fully considering the relevance of racial diversity to the various goals of higher education it may promote.

[6] *Id.* at 160. Throughout the remainder of this paper, I use the terms "goals" and "interests" interchangeably.

The *Hopwood* court often seemed to consider all non-remedial uses of affirmative action to be akin to the use of race for race's sake. Thus the court said, "[W]e see the case law as sufficiently established that the use of ethnic diversity *simply to achieve racial heterogeneity*, even as part of a number of factors, is unconstitutional."[7] Obviously a university's use of affirmative action to foster racial diversity has to serve some goal beyond the achievement of diversity itself. That much was clear from *Regents of the University of California v. Bakke*.[8] Racial diversity in the student body is not an end in itself; it is an objective that is sought only because it serves some larger goals of higher education. It is those goals (or interests) that a court must judge to determine if they are sufficiently compelling to justify affirmative action.

Much has been written about the goals of higher education, yet they are still a topic of debate. At least four potentially compelling goals of higher education may be enhanced by pursuing the objective of promoting racial diversity in the student body, by which I mean increasing minority representation at predominantly white universities: (1) *promoting teaching and learning* (stimulating thought by providing diverse perspectives relevant to various fields of study); (2) *enhancing civic values* (instilling students with the tolerance, understanding, and open-mindedness necessary for them to function as good citizens and/or effective leaders in our multicultural, democratic society); (3) *remedying the lack of essential-service providers in society* (producing well-educated professionals to practice in under-served communities); and (4) *remedying racial stratification in society* (producing well-educated minorities to serve at advanced levels of society).[9]

The remainder of this section will describe in greater detail each of these goals and its link to the objective of promoting racial diversity. Furthermore, this section will consider which, if any, of these goals (or interests) are most likely to be considered "compelling" by the current Supreme Court. The Court has offered little guidance concerning precisely what the term "compelling interest" means.[10] Nonetheless, it is

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[7] *Hopwood*, 78 F.3d at 945-46 (emphasis added).

[8] *See Bakke*, 438 U.S. at 307 (opinion of Powell, J.).

[9] Notice that the first two goals identified here constitute the "educational diversity" at issue in *Bakke*. They are believed to be furthered by interactions among students of different races (i.e., it is the diversity that is important) and are intended to benefit all students. The last two goals flow from the definition of diversity as the inclusion of minorities at predominantly white universities. They are intended to benefit primarily the minority students and some segments of society. All of these goals are interrelated and can be divided in several different ways. Finally, other goals may also be relevant, such as the interest in developing new knowledge (providing diverse perspectives to stimulate new research and writing), which is closely related to the goal of promoting teaching and learning.

[10] *See, e.g.*, Stephen E. Gottlieb, *Compelling Governmental Interests: An Essential But Unanalyzed Term in Constitutional Adjudication*, 68 B.U. L. Rev. 917, 937 (1988) ("[W]ith few exceptions, the Court has failed to explain the basis for finding and deferring to compelling governmental interests."). Some legal commentators have suggested that the Court has adopted a "know it when I see it approach" to identifying compelling interests, *id. (quoting* Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring), and that "compelling, even more than beauty, [may be] in the eyes of the beholder," David Schimmel, *Is Bakke Still Good Law? The Fifth*

possible to glean some general principles from the Court's jurisprudence and to reach some tentative conclusions with regard to the four goals identified above.

1. Promoting Teaching and Learning

One interest that may be served by promoting racial diversity in student admissions is *teaching and learning*. Teaching and learning is obviously a central part of the mission of higher education. It is also of great importance to society. Significantly, teaching and learning at universities occurs not only between faculty and students but among students themselves.[11] In *Bakke*, Justice Powell recognized that "[p]eople do not learn very much when they are surrounded only by the likes of themselves."[12] Thus, a diversity of student perspectives, including racial perspectives, promotes substantive teaching and learning, both in and out of the classroom, by exposing students to a variety of views on whatever subject is at issue and by challenging students' individual perspectives. Racial diversity, therefore, benefits *all* students by providing them with a more complete educational experience.[13]

This interest in teaching and learning can perhaps be more fully explained by responding to the criticisms often lodged against it. The most common criticism levied against this interest is that it equates race with viewpoint: As the Fifth Circuit asserted in *Hopwood*, "To believe that a person's race controls his point of view is to stereotype him."[14] But this criticism misses the point. The belief is not that a person's race controls his viewpoint, but rather that a person's race may affect his/her life experience and, in turn, his/her perspective on certain issues. This does not stereotype a person any more than the belief that where a person was born and raised may have a similar effect. In a sense, what is at issue is not racial diversity at all, but experiential diversity: "The variety of viewpoints that the university seeks to foster

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Circuit Says No and Outlaws Affirmative Action, 113 Ed. L. Rep. 1052, ___ (1996) (*quoting* Lino Graglia, Texas Lawyer, Sept. 25, 1995 at 25).

[11] *See, e.g.*, Ernest T. Pascarella & Patrick T. Terenzini, How College Affects Students 620 (1991) ("Consistent with evidence on the impact of student-faculty interaction, students' interactions with their peers also have a strong influence on many aspects of change during college. Included are such areas as intellectual development and orientation; political, social, and religious values; academic and social self-concept; intellectual orientation; interpersonal skills; moral development; general maturity and personal development; and educational aspirations and educational attainment.").

[12] *Bakke*, 438 U.S. at 313 (*quoting* William Bowen, *Admissions and the Relevance of Race*, Princeton Alumni Weekly 7, 9 (Sept. 26, 1977)).

[13] *See, e.g.*, Akhil Reed Amar & Neal Kuma Katyal, *Bakke's Fate*, 43 UCLA L. Rev. 1745, 1749 (1996) ("Integrated education . . . does not just benefit minorities -- it advantages all students in a distinctive way, by bringing rich and poor, black and white, urban and rural, together to teach and learn from each other as democratic equals.").

[14] *Hopwood*, 78 F.3d at 946.

does not come from any innate difference between the races themselves, but rather from the varying life experiences of the individuals, due in large part to their racial backgrounds."[15] Furthermore, the point is not that every black person, for example, will feel the same about every issue, or that every black person will feel differently than every white person about every issue. Rather, the simple reality is that black and white persons are often perceived differently in the world and, in turn, often perceive the world differently.[16]

The Fifth Circuit in *Hopwood* seems to deny the role of race in society by stating that race is no more relevant than blood type.[17] This comparison is insulting. It is safe to assume that blood type is in no way correlated with educational opportunity, socio-economic status, or the nature of interpersonal relations in our country. Substantial evidence indicates that this is clearly not true for race.[18] The Fifth Circuit, like all of us, may wish that there were not racial differences in society, but it cannot deny reality. "One must be careful to distinguish between issues of is and ought."[19] And if the court's goal is to delegitimize racial differences in society,[20] the question from the perspective of university admissions is what is more likely to facilitate that goal -- allowing black and white students to interact in the university marketplace of ideas or effectively censoring all differences between black and white students from discussion in that marketplace by disallowing affirmative action in student admissions?

A second criticism that may be lodged against promoting racial diversity in the student body to further the interest in teaching and learning is that it relies on a faulty pedagogical premise: The university is a place where faculty teach students, not where students teach students. This criticism is both wrong and

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[15] Murphy, *supra* note 3, at __.

[16] "Students 'come to "understand" primarily on the basis of their own reflecting experience, into which they seek to incorporate the new ideas they encounter in their courses.' Because their experiences determine their frame of reference, minority students bring the influence of these experiences to assignments and discussions." Note, *An Evidentiary Framework for Diversity as a Compelling Interest in Higher Education*, 109 Harv. L. Rev. 1357, 1370 (1996) (*quoting* John D. Wilson, Student Learning in Higher Education 29 (1981)). Racially diverse perspectives may be more relevant to some issues than others. *See, e.g.*, Amar and Katyal, *supra* note 13, at 1778 ("Of course, diversity cannot function in the same way, or be as important, in every academic context. There may be settings where diversity may not have much educational importance at all (graduate school in math, perhaps) and other settings where it will matter a great deal (college, for example)."). But at any comprehensive university, racially diverse perspectives are likely to be more often relevant than not.

[17] *See Hopwood*, 78 F.3d at 945.

[18] *E.g.*, Affirmative Action Review: Report to the President 20-25 (July 1995) (presenting evidence of continued racial stratification and discrimination in American society).

[19] Adolphous Levi Williams, Jr., *A Critical Analysis of the Bakke Case*, 16 S.U. L. Rev. 129, 225 (1989). "However unpleasant it may be, the issue of race is still very much an unresolved issue in the United States. As desirable as it might be to set this issue to one side, pretend it does not exist, or acknowledge its existence and accord it only minimal importance, the historical evidence and realities (for example the small percentage of Afro-American[s] in the professions) lead us in the opposite direction and to another conclusion; specifically, that race must be considered now and in the foreseeable future." *Id.* at 229.

[20] *See Hopwood*, 78 F.3d at 940 (suggesting that the goal of equal protection is to make race irrelevant).

misses the point. It is wrong because it assumes that faculty have all the answers and have internalized all relevant perspectives concerning their subjects. On the contrary, the role of faculty is to constantly discover as well as to share knowledge, and "[these] functions of discovering and sharing knowledge are intimately related."[21] Furthermore, the criticism is wrong because it assumes that all teaching and learning occurs in the classroom. "A great deal of learning occurs informally."[22] Finally, this criticism misses the point because even if it were true that only faculty teach students, it is widely believed that student-centered teaching, whether it be discussion sections in college, the Socratic method in law school, the case method in business school, etc., improves the overall educational experience (i.e., promotes teaching and learning). "In the classroom, professors can use the backgrounds and experiences of other students as a learning tool."[23]

Finally, the question of whether this interest in promoting teaching and learning, which is part of the educational diversity endorsed in *Bakke*, is likely to be found compelling by the Supreme Court today is a separate issue that can perhaps best be determined by examining the likely view of each Justice. On the negative side of the ledger, Justices Scalia and Thomas and Chief Justice Rehnquist are unlikely to find this interest to be compelling. Justices Scalia and Thomas have recently indicated that they favor full race-neutrality,[24] and Chief Justice Rehnquist shows no signs of favoring diversity.[25] On the positive side, Justice Stevens has taken a pragmatic view of what constitutes a compelling interest and now clearly supports educational diversity as sufficiently compelling.[26] Furthermore, while the views of Justices

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[21] Nannerl O. Keohane, *The Mission of the Research University, in* The Research University in a Time of Discontent 157 (Jonathan R. Cole, Elinor G. Barber & Stephen R. Graubard eds., 1994). In this way, promoting racial diversity can also further universities' goal of developing new knowledge, because students not only help educate other students; they also educate and stimulate faculty. *See id.* at 157-64.

[22] *Bakke*, 438 U.S. at 313 n.48 (*quoting* Bowen, *supra* note 12, at 9).

[23] Note, *supra* note 16, at 1370.

[24] *See Adarand*, 115 S. Ct. at 2119 (Scalia, J., concurring in part) ("To pursue the concept of racial entitlement -- even for the most admirable and benign purpose -- is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American."); *id.* (Thomas, J., concurring in the judgment) ("In my mind, government-sponsored racial discrimination based on benign prejudice is just as noxious as discrimination inspired by malicious prejudice. In each instance, it is racial discrimination, plain and simple.").

[25] *See, e.g.*, Amar & Katyal, *supra* note 13, at 1768 ("William Rehnquist voted for Allan Bakke once, and his writings and opinions reveal no faith in Lewis Powell's diversity theory.").

[26] *See, e.g.*, Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 601-02 (Stevens, J., concurring) ("The public interest in broadcast diversity -- like the interest in an integrated police force, diversity in the composition of a public school faculty, or diversity in the student body of a professional school -- is in my view unquestionably legitimate.").

Souter, Breyer, and Ginsburg are somewhat less known, their dissents in *Adarand v. Pena* clearly evidence a rejection of strict race neutrality and potential support for educational diversity as a compelling interest.[27]

The apparent swing votes, therefore, are likely Justices Kennedy and O'Connor, whose views are somewhat difficult to discern. Justice Kennedy seems generally to be opposed to affirmative action because he has often been a strong proponent of race neutrality.[28] Justice O'Connor has not been as strong a proponent of race neutrality, but she authored the main dissent in *Metro Broadcasting, Inc. v. FCC*, joined by Justice Kennedy, among others, which rejected broadcast diversity as a compelling interest and suggested that only the remedial interest in overcoming the present effects of past discrimination could ever constitute a compelling interest.[29] Nonetheless, there are clear differences between the broadcast diversity at issue in *Metro* and the interest in promoting teaching and learning in the higher education context.[30] Furthermore, Justice O'Connor's prior opinions indicate some level of support for educational diversity.[31] Finally, in *Adarand,* Justice O'Connor avoided repudiating *Bakke*, indicated that strict scrutiny is not "fatal in fact," and, joined only by Justice Kennedy, reaffirmed her belief in the importance of precedent.[32] This last point concerning the importance of precedent may be especially important:

> *Adarand* teaches us a valuable lesson about Justices O'Connor and Kennedy. . . . Joined . . . only by Justice Kennedy, [Justice O'Connor] carefully crafted one section of *Adarand* in light of her 1992 [*Planned Parenthood v.*] *Casey* opinion (coauthored with Justices Kennedy and Souter), which cautioned against overruling hugely important cases around which major social expectations have crystallized. . . . Thus a big "plus" for *Bakke* [and its interest in promoting teaching and learning] is its social importance. An entire generation of Americans has been schooled under

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[27] *See Adarand*, 115 S. Ct. at 2120 (Stevens, J., dissenting, joined by Ginsburg, J.); *id.* at 2131 (Souter, J., dissenting, joined by Ginsburg and Breyer, JJ.); *id.* at 2134 (Ginsburg, J., dissenting, joined by Breyer, J.). Justice Ginsburg's explanation, joined by Justice Souter, concerning the Court's denial of *certiorari* in *Hopwood* is perhaps also evidence of their support for affirmative action in the higher education context. *See* Texas v. Hopwood, 116 S. Ct. 2581 (1996) (indicating that the issue of whether universities can use race as one factor in admissions is "an issue of great national importance" that will be decided another day).

[28] *See* Amar & Katyal, *supra* note 13, at 1757-58, 1769.

[29] *Metro*, 497 U.S. at 3028 (O'Connor, J., dissenting).

[30] These differences include the unique role of education in society, the special First Amendment protections of academic freedom operating in the higher education context, the emphasis placed on individualistic diversity in *Bakke* versus the largely pluralistic diversity at issue in *Metro*, the direct interactions among students in a university environment versus the attenuated interactions between owners of broadcast stations and the public, and the fact that Justice Powell upheld educational diversity under strict scrutiny in *Bakke*. *See, e.g.*, Amar & Katyal, *supra* note 13, at 1747 (1996) (offering several potentially salient distinctions between *Bakke* and *Metro*).

[31] *See, e.g.*, Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 286 (1986) (O'Connor, J., concurring) ("[A]lthough its precise contours are uncertain, a state interest in the promotion of racial diversity has been found sufficiently 'compelling,' at least in the context of higher education, to support the use of racial classifications in furthering that interest."); *id.* at 288 n.* ("The goal of providing 'role models' discussed by the courts below [and rejected by the Supreme Court here] should not be confused with the very different goal of promoting racial diversity among the faculty.").

[32] *Adarand,* 115 S. Ct. at 2114-17.

> *Bakke*-style affirmative action. . . . Only a handful of modern Supreme Court cases are now household words in America. But *Bakke* -- like *Brown* and *Roe* -- is surely one of them.[33]

Given this analysis, there is likely a case to be made for affirmative action in higher education based on the interest in promoting teaching and learning. But it is likely to be a tough case.

2. Enhancing Civic Values

A related interest that may be furthered by promoting racial diversity in the student body is *enhancing civic values*. Education has long been viewed in our democratic society as "the very foundation of good citizenship."[34] "[M]uch of the point of education is to teach students how others think and to help them understand different points of view -- to teach students how to be sovereign, responsible, and informed citizens in a heterogeneous democracy."[35] By bringing together and promoting interaction among an array of students from diverse racial and ethnic groups, universities help cultivate the values of understanding, tolerance, and respect for others that make all students better citizens. This goal is central to universities and is arguably the cornerstone of arguments for racial diversity.

> Institutions of higher education are today a primary source of . . . cultural capital. They aspire to cultivate the remarkable and difficult capacity to regard oneself from the perspective of the other, which is the foundation of the critical interaction necessary for active and effective citizenship. . . . In the United States, . . . racial and ethnic identities mark lines of intense political division. If the racial and ethnic rifts that divide us are to be transcended by a democratic state that is legitimate to all sides, there must be articulate participation in public culture that concomitantly spans the lines of these controversies.[36]

This civic interest is at the heart of *Bakke's* diversity rationale and is often analyzed as part of the interest in promoting teaching and learning described above. Therefore, the prior analysis of the likely views of each justice concerning whether the interest in teaching and learning is "compelling" likely applies here. However, I have disaggregated the two interests to point out an important difference: Unlike the teaching and learning interest, the civic interest does not *necessarily* depend on judgments about

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[33] Amar & Katyal, *supra* note 13, at 1769-70.

[34] Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

[35] Amar & Katyal, *supra* note 13, at 1774.

[36] Robert Post, *Introduction: After Bakke*, Representations, Summer 1996, at 1,1. *See also* Amar & Katyal, *supra* note 13, at 1749 ("If a far-flung democratic republic as diverse -- and at times divided -- as late twentieth-century America is to survive and flourish, it must cultivate some common spaces where citizens from every corner of society can come together to learn how others live, how others think, how others feel. If not in . . . universities, where? If not in young adulthood, when?").

individuals' viewpoints. Even if the lesson that black and white students, for example, learn from interacting with each other in a university setting is that there is no viewpoint correlated with race (i.e., that black and white students do not in fact see any issues differently in any consistent way), that would likely be an extremely valuable lesson toward instilling students of all races with the tolerance and understanding necessary for them to function as good citizens in our multicultural, democratic society. As Justice Stevens explained in *Wygant v. Jackson Board. of Education,* referring to the value of racial diversity in the faculty:

> In the context of public education, it is quite obvious that a school board may reasonably conclude that an integrated faculty will be able to provide benefits to the student body that could not be provided by an all-white, or nearly all-white, faculty. *For one of the most important lessons that the American public schools teach is that the diverse ethnic, cultural, and national backgrounds that have been brought together in our famous "melting pot" do not identify essential differences among the human beings that inhabit our land.* It is one thing for a white child to be taught by a white teacher that color, like beauty, is only "skin deep"; it is far more convincing to experience that truth on a day-to-day basis during the routine, ongoing learning process.[37]

This distinction could make a difference to Justice O'Connor, who in her *Metro* dissent indicated her opposition to any affirmative action program that is based on the assumption that a person's race determines how he/she thinks.[38] As explained above, I believe that this criticism concerning race and viewpoint misunderstands the relevance of racial diversity in the higher education context. Nonetheless, to the extent that the criticism can be avoided, the case for enhancing civic values as a compelling interest may be slightly stronger than that for promoting teaching and learning.

3. Remedying the Lack of Essential-Service Providers

On a different level than the two educational interests just described, promoting the inclusion of racial minorities at predominantly white universities may serve the interest in *producing well-educated professionals to practice in under-served areas in society*. This interest is different than the interests in

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[37] Wygant, 476 U.S. at 315 (Stevens, J., dissenting) (emphasis added). Some seek to distinguish this *sameness* argument from the *difference* argument for promoting racial diversity. But I see the two as inherently linked. Persons of different races likely have some differences that are real, based on their different cultures and experiences, and others that are based on misperceptions from which our sameness can emerge. But the point is that it does not matter to which theory one subscribes because racial diversity likely promotes civic values among all students in either case. Therefore, this goal for affirmative action cannot be said to turn on the relationship between race and viewpoint.

[38] *See Metro*, 497 U.S. at 602 (O'Connor, J., dissenting).

teaching and learning and civic values because it is not based on the interaction among students of different races. In fact, this interest is not really concerned with the race of the students at all. Rather, it seeks to promote minority student attendance only because under-served communities tend to be largely minority communities, and because it is believed that minority graduates are more likely to practice in those communities.

This interest may be compelling in some circumstances where the need for certain service providers is itself compelling. For example, in *Bakke,* Justice Powell suggested that the state's interest in "facilitating the health care of its citizens" by expanding health services in under-served communities was arguably compelling enough to justify the use of race-based affirmative action at Davis Medical School, but he rejected the interest in large part because there was no evidence that minority graduates were more likely to practice in such under-served communities.[39] As will be shown below, such evidence now exists. However, as will also be shown below, affirmative action programs designed to promote this interest are unlikely to withstand strict scrutiny under any circumstances because they suffer from a different fatal flaw -- there are clearly race-neutral means available to further this interest (i.e., the program would not be necessary or narrowly tailored).[40] For example, a university could offer scholarships to students who pledge to practice in under-served communities after graduation. At the extreme, universities could even reserve admissions slots for students who agree to practice in under-served communities. Therefore, the potentially compelling nature of this goal is likely moot.

4. Remedying Racial Stratification in Society

Finally, promoting the inclusion of racial minorities through affirmative action in university admissions may serve the interest in *remedying racial stratification by producing well-educated minorities to serve at advanced levels in society*. This interest rests in part on the notion that universities are prime forces of social mobility. However, this interest does not only have a social promotion component to it; it may also have an instrumental component: It may be necessary in some circumstances to admit minority students to study in certain fields because there is an instrumental value to having minorities in certain positions in society. For example, in *Wittmer v. Peters*,[41] the Seventh Circuit upheld an affirmative action program for correctional officers at a prison "boot camp" because the court found it was necessary to promote black officers to serve the state's compelling interest in "pacification and reformation" of youth

[39] *Bakke*, 438 U.S. at 310-11 (opinion of Powell, J.).
[40] Justice Powell mentioned this criticism in *Bakke* as well. *See id.* at 311.
[41] 87 F.3d 916 (7th Cir. 1996), *cert. denied,* 65 USLW 3416 (1997).

offenders. Imagine that instead of the boot camp seeking to promote a black officer directly, the local university sought to enroll a black applicant in its correctional officer training program. In that case, there would perhaps be an argument that, given the compelling interest in having some black correctional officers in supervisory positions, the university program would pass strict scrutiny.

It is clear that universities may not use affirmative action simply to promote the social mobility of minorities; that interest is largely akin to the interest in overcoming "societal discrimination," which the Supreme Court has clearly indicated is not sufficiently compelling to justify affirmative action by any entity except perhaps the federal government.[42] Furthermore, even where there is an instrumental value to the promotion of minorities in a given field, affirmative action is likely to raise substantial concerns for the Court. Nonetheless, this interest may be worth pursuing in defense of a university's affirmative action program where there is an extremely close connection between the education the university provides and the availability of minorities in potentially compelling positions in society. One possible example that will be explored below is the medical profession.[43]

B. Evidence Linking the Objective of Promoting Racial Diversity to the Goals of Higher Education

In order to make the case for affirmative action in higher education, the objective of promoting racial diversity must be linked to the above goals of higher education by more than mere analytical presumptions. The Supreme Court will uphold affirmative action only where there is "*a strong basis in evidence*" to support the belief that the given program serves a compelling interest and is narrowly tailored to achieve that interest.[44] Given the paucity of evidence concerning the value of racial diversity in higher education, this heightened evidentiary requirement would seem to pose the greatest challenge to efforts to promote affirmative action based on the diversity rationale. "The hope for preserving pluralism in American higher education now rests on our ability to marshal specific evidence that the institutions' core

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[42] *See, e.g., Bakke*, 438 U.S. at 307-10 (opinion of Powell, J.) (holding that the interest in overcoming societal discrimination is insufficient to justify affirmative action by a university).

[43] *See infra* text accompanying notes 73-78.

[44] *See, e.g.*, Richmond v. J.A. Croson Co., 488 U.S. 469, 500 (1989) (*quoting* Wygant, 476 U.S. at 277). This subsection of the paper focuses on showing that racial diversity serves a compelling interest. The related issue of whether affirmative action is necessary to promote that interest is an issue of *strategy* and is discussed below. *See infra* text accompanying notes 92-99.

needs and values require special efforts for racial and ethnic minorities."[45] In other words, universities must present clear evidence that promoting racial diversity serves one or more of the potentially compelling interests identified above.

It is unclear how much and what kind of evidence is necessary to meet this evidentiary requirement. A recent article argues that the Court should be satisfied with "the testimony of educators."[46] Many academics have touted the value of diversity,[47] but I am not confident that such evidence will independently be sufficient to sustain affirmative action. (It certainly was not in *Hopwood.*) Nonetheless, several factors arguably favor universities in their efforts to present sufficient evidence of the value of racial diversity: (1) The First Amendment concept of academic freedom holds that it is chiefly the university's place "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."[48] (2) The Supreme Court has arguably indicated that some deference to higher education experts may be appropriate with regard to affirmative action.[49] (3) While universities must present substantial evidence of the value of diversity, the ultimate burden of proof remains with the plaintiff(s) challenging a university's affirmative action program to prove that it violates his/her equal protection rights.[50] (4) In *Wittmer v. Peters,* Chief Judge Posner held that how much and what kind of evidence is required under the strict scrutiny standard depends, in part, on what evidence is available.[51]

This section of the paper describes possible evidentiary chains linking the objective of promoting racial diversity within the student body to each of the four potentially compelling interests identified above (in other words, assessing the value of diversity). Direct evidence linking racial diversity to most of the interests identified above is extremely limited; some have even suggested that such evidence cannot be produced.[52] Furthermore, what evidence does exist sometimes shows mixed results concerning the value of

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[45] Martin Michaelson, *Building a Comprehensive Defense of Affirmative Action Programs,* Chron. of Higher Ed., July 28, 1995, at A56.

[46] Note, *supra* note 16, at 1361.

[47] *See, e.g.,* Gabriel J. Chin, *Bakke to the Wall: The Crisis of Bakkean Diversity*, 4 Wm. & Mary Bill Rts. J. 881, 888-89 (1996).

[48] *Bakke* 438 U.S. at 312 (opinion of Powell, J.) (*quoting* Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring in the result)).

[49] *See* Southern Education Foundation, Redeeming the American Promise, 14-18 (1995) (suggesting that the Supreme Court's statement in *United States v. Fordice*, 505 U.S. 717 (1992), that policies traceable to the de jure segregated era must be eliminated "to the extent practicable and consistent with sound educational practices," indicates a willingness to defer, to some extent, to education leaders).

[50] *See, e.g., Wygant*, 476 U.S. at 277-78 (plurality opinion); *id.* at 292 (O'Connor, J., concurring).

[51] *See Wittmer*, 87 F.3d at 920-21.

[52] *See, e.g.,* Note, *supra* note 16, at 1361-62 ("Although the educational community has heralded diversity's benefits, current social science methods do not provide definitive measurements. Therefore, if courts did require universities to prove that diversity furthers learning, courts would be making a substantive choice that higher

racial diversity in higher education. However, this is likely because the resource of racial diversity has, until recently, been largely underutilized by universities in any formal way and has in turn been underevaluated as well. Still, some positive direct evidence exists concerning the value of diversity, and other indirect evidence shows great promise. Therefore, I conclude that there is likely a case to be made for the importance of racial diversity in achieving the goals of higher education, but universities must promote efforts to use the resource of diversity more effectively and to evaluate it more rigorously.

1. Evidence Linking Racial Diversity to the Goal of Promoting Teaching and Learning

Direct evidence linking racial diversity in the university student body to the goal of promoting teaching and learning would include studies that demonstrate more effective teaching and learning in racially diverse environments, including enhanced learning on substantive issues, improved cognitive skills, etc. Such studies are rare, but some recent and encouraging attempts have been made. For example, several recent longitudinal studies based on nationwide student survey data report positive correlations between increasing cross-racial student interactions and such educational outcomes as retention, satisfaction with college, intellectual self-concept and social self-concept (at least where coupled with efforts to promote constructive interactions among students of different racial groups).[53] Other studies have tried to measure the effects of diversity at a more micro-level. One example is a recent study by Maurianne Adams and Yu-hui Zhou-McGovern that attempted to measure the effects of an undergraduate social diversity course (with a racially diverse student enrollment) on students' cognitive development.[54] Adams and Zhou-McGovern hypothesized that "[c]ollege curricula that deal with social justice and social diversity call for many of the qualities described in the [cognitive] developmental literature with regard to critical thinking, openness to conflicting perspectives from readings or classroom discussions, and, most especially, the ability to reflect upon one's experience, prior beliefs and feelings from another's

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educational institutions cannot pursue diversity. . . . The benefits of diversity are the result of interpersonal interactions that cannot be quantified or verified by scientific proof.").

[53] *See* Alexander Astin, *How Are Students Affected?* 25 Change 44 (1993); Octavio Villalpando, Comparing the Effects of Multiculturalism and Diversity on Minority and White Students' Satisfaction with College, ASHE Annual Meeting Paper 16 (Nov. 9, 1994); Mitchell Chang, Racial Diversity in Higher Education: Does a Racially Mixed Student Population Affect Educational Outcomes? 11-12 (1996) (forthcoming article based on unpublished Ph.D. dissertation, University of California, Los Angeles).

[54] Maurianne Adams and Yu-hui Zhou-McGovern, The Sociomoral Development of Undergraduates in a "Social Diversity" Course, Paper presented at the Annual Meeting of the American Educational Research Assoc. (Apr. 1994).

perspective."[55] Based on tests administered to students before and after participation in the social diversity course, Adams and Zhou-McGovern found statistically significant, positive effects on students' cognitive development.[56]

The above studies indicate that it is possible to develop evidence linking racial diversity in the student body to the goal of promoting teaching and learning, but much more research is clearly needed. Studies showing a direct link between racial diversity and improved teaching and learning are likely hard to produce. Assessing teaching and learning is inherently difficult, and assessing that part of teaching and learning attributable to diversity is likely even more so. However, qualitative data may be more readily available than quantitative data and should not be undervalued.[57]

Finally, in the short term, the premise that racial diversity in the student body improves teaching and learning can perhaps be proven indirectly. First, there is evidence that having a variety of perspectives examine a problem, in general, promotes problem solving. "Studies have shown that work team heterogeneity promotes critical strategic analysis, creativity, innovation, and high-quality decisions."[58] Second, those perspectives that should be actively included in a diverse problem-solving group are likely those perspectives that are relevant to the given problem or subject at issue and are not otherwise adequately represented. Third, there is substantial evidence indicating that race is often relevant in the sense that black and white persons, for example, often have different experiences in the world as a result of race and, in turn, often see the world differently.[59] Therefore, there is likely a strong argument to be made

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[55] *Id.* at 1-2.

[56] *Id.* at 31.

[57] *See* Villalpando, *supra* note 53, at 25; Telephone Interview with Mitchell Chang, Professor, Loyola Marymount Univ. (Apr. 1, 1997).

[58] Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 Cal. L. Rev. 953, 1024 (1996) (*citing* L. Richard Hoffman & Norman R.F. Maier, *Quality and Acceptance of Problem Solutions by Members of Heterogeneous Groups*, 62 J. Abnormal and Social Psychology 401 (1961)). Of course, not all of the effects of diversity, especially cultural diversity, on problem solving are positive. "Although culturally diverse groups have the potential to generate a greater variety of ideas and other resources than culturally homogeneous groups, they need to overcome some of the group interaction problems that make group functioning more difficult." Warren E. Watson & Kamalesh Kumar, *Differences in Decision Making Regarding Risk Taking: A Comparison of Culturally Diverse and Culturally Homogeneous Task Groups*, 16 Int'l J. of Intercultural Relations 53, 61 (1992).

[59] This often unfortunate truth can be shown in many ways including audit studies and surveys that demonstrate the continuing vestiges of discrimination that African Americans and other minorities face in their daily lives. *See, e.g.*, Michael Fix, George C. Galster & Raymond J. Struyk, *An Overview of Auditing for Discrimination*, *in* Clear and Convincing Evidence: Measurement of Discrimination in America 1 (Michael Fix & Raymond J. Struyk eds., 1993) (discussing evidence of discrimination facing minorities in employment and housing); Jennifer L. Hochschild, Facing Up to the American Dream 114 (1995) (reporting that white persons rank black persons as more violent and less likely to work hard). Such vestiges undoubtedly influence minority life experiences and likely contribute to differences in black and white viewpoints on countless issues, from welfare reform to the O.J. Simpson verdicts. *See, e.g.*, The Four Americas: Government and Social Policy Through the Eyes of America's

for the notion that including black students' perspectives in university discussions is likely to enhance problem solving, and thereby teaching and learning, on many issues, at least in student-centered learning environments.

2. Evidence Linking Racial Diversity to the Goal of Enhancing Civic Values

Direct evidence linking racial diversity in the student body to the goal of enhancing civic values would include research studies that demonstrate that students' values, beliefs, and/or actions are positively affected by a more diverse campus environment. Once again, such direct evidence is extremely limited. "National studies dealing with changes during the college years in attitudes and values related to civil rights, civil liberties, racism, anti-Semitism, or general tolerance for nonconformity uniformly report shifts toward social, racial, ethnic, and political tolerance and greater support for the rights of individuals in a wide variety of areas."[60] But there is little evidence that racially diverse educational environments themselves have such effects. One exception is a recent longitudinal study by Alexander Astin, mentioned above, in which he found that increased faculty and institutional commitment to diversity and increased student diversity experiences (such as participation in a cultural awareness workshop) were positively associated with increased cultural awareness among students and/or increased student commitment to promoting racial understanding.[61] Thus Astin lends some direct support to the notion that efforts to promote racial diversity in turn promote civic values, and other studies have corroborated Astin's findings that participation in cultural awareness workshops has positive effects on students' attitudes about racial diversity.[62] But much more research is clearly needed.

Once again, the link between racial diversity in the student body and the goal of inculcating civic values can perhaps be established indirectly by studies demonstrating that interactions among different types of people, in general, promote tolerance and understanding. This theory is widely known as the "contact hypothesis," which states that "contact with members of a negatively stereotyped group might ameliorate attitudes both toward the specific group member or members with whom contact occurred, and

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Multi-Racial and Multi-Ethnic Society, Harvard Survey Project 25-37 (Dec. 1995) (illustrating differences in viewpoints by race with regard to numerous issues).

[60] Pascarella & Terenzini, *supra* note 11, at 279.

[61] *See* Astin, *supra* note 53, at 46-49.

[62] *See, e.g.*, Leonard Springer et al., *Attitudes Toward Campus Diversity: Participation in a Racial or Cultural Awareness Workshop*, 20 Rev. of Higher Ed. 53, 60-66 (1996) (showing that participation in a cultural awareness workshop is positively associated with more favorable attitudes toward racial diversity among white students including men, women, and students in both liberal and conservative majors).

toward the group as a whole."[63] Numerous studies have provided support for the contact hypothesis *provided that certain conditions are met.* These conditions include (1) that the interaction occur between persons of equal status, (2) that the interaction afford persons the chance to get to know each other, and (3) that the interaction be cooperative and in pursuit of mutual goals.[64] Even where these conditions are met, most studies concerning the contact hypothesis show a positive shift in attitudes only toward the specific stereotyped group member and not necessarily toward the group as a whole. But recent studies have shown support for the generalization component of the contact hypothesis as well.[65] Therefore, the contact hypothesis could lend indirect support for the importance of racial diversity in promoting such civic values as racial tolerance and understanding, provided that universities are willing to make the commitment to foster cross-racial cooperative learning opportunities.

3. Evidence Linking Racial Diversity to the Goal of Remedying the Lack of Service Providers in Under-Served Communities

There is substantial evidence of a lack of certain types of professionals practicing in certain segments of society. These under-served communities tend to be largely minority. Furthermore, there is some evidence that minority professionals are more likely to practice in these areas. Therefore, increasing minority enrollment in certain professional programs may remedy this lack of service providers. The most apparent example is the medical profession: There is substantial evidence of a shortage of physicians in certain segments of society.[66] While there is some evidence of shortages in poor communities, a recent study in California indicates that "[t]he supply of physicians was much more strongly associated with the proportion of black and Hispanic residents in the community areas than with the areas' income level."[67]

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[63] James L. Werth & Charles G. Lord, *Previous Conceptions of the Typical Group Member and the Contact Hypothesis*, 13 Basic and Applied Social Psychology 351 (1992). *See also* Gordon Allport, The Nature of Prejudice (1954) (proposing the contact hypothesis).

[64] *See* Werth & Lord, *supra* note 63, at 352; Donna M. Desforges et al., *Effects of Structured Cooperative Contact on Changing Negative Attitudes Toward Stigmatized Social Groups*, 60 J. of Personality and Social Psychology 531 (1991); Janet Ward Schofield, *Improving Intergroup Relations Among Students, in* Handbook on Research on Multicultural Education 635, 638-41 (James A. Banks ed., 1995).

[65] *See* Desforges, *supra* note 64, at 535-40 (showing that cooperative learning interactions between college students and other students who they believed were former mental patients had a positive effect on the college students' attitudes toward the supposed mental patients with whom they interacted and toward mental patients overall); Werth & Lord, *supra* note 63, at 358-63 (indicating, with some lack of experimental controls, that classroom interactions between college students and a guest speaker with AIDS had a positive effect on the students' attitudes toward the speaker and toward people with AIDS more generally, but finding that the change in attitudes was only significant for students who had not previously had contact with a person with AIDS).

[66] *See, e.g.*, Miriam Komaromy et al., *The Role of Black and Hispanic Physicians in Providing Health Care for Underserved Populations*, 334 N.E. J. of Medicine 1305 (May 16, 1996).

[67] *Id.* at 1307.

Finally, studies show that black and Hispanic medical school graduates are significantly more likely to practice in these under-served areas.[68] Therefore, affirmative action in medical school admissions may be necessary to further the compelling interest in facilitating health care to all citizens.[69] However, as mentioned above and discussed below, it is unlikely that affirmative action programs designed to achieve this interest will pass strict scrutiny, despite the above evidence, because there are likely race-neutral means available to achieve this goal.

4. Evidence Linking Racial Diversity to the Goal of Remedying Racial Stratification in Society

There is ample and impressive evidence that higher education is a major force of social mobility for minorities. Consider the effects of college on minorities' future earnings: First, for all students, the effect of obtaining an undergraduate degree on future earnings has never been greater.[70] Second, a college degree results in an even greater increase in earnings for black students than for white students.[71] Third, and most important in the context of affirmative action, a recent study shows that minority students who attend selective universities, often as a result of affirmative action, have higher future earnings than equally qualified minority students who attend less prestigious universities.[72] This shows that affirmative action in higher education is itself an agent of social mobility.

Despite all of this, it is not likely that the Supreme Court would find that universities are the appropriate actors to decide to use affirmative action to pursue this goal of remedying racial stratification, which is akin to remedying societal discrimination. However, as stated above, there may be rare cases where increasing the number of minorities serving in select positions in society has an instrumental value that is itself compelling, and where universities are so closely connected to producing minorities to serve in those positions that affirmative action would be justifiable.

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[68] *Id.*; S.N. Keith et al., *Effects of Affirmative Action in Medical Schools: A Study of the Class of 1975*, 313 N.E. J. of Medicine 1519-25 (1985).

[69] *See Bakke*, 438 U.S. at 310-11 (indicating that the state's interest in "facilitating the health care of its citizens" was potentially compelling).

[70] *See* William G. Bowen, *No Limits*, Transcript of speech delivered at Cornell Univ. 2-3 (May 21, 1995) (*quoting* Sarah E. Turner, Changes in Returns to College Quality, U. of Mich, Dep't of Econ., mimeo (April 1995)).

[71] *See One Statistical Measure of How a College Education Tends to Repair Damage From the Past*, J. of Blacks in Higher Ed. 5 (Autumn 1996) (reporting that the median annual income of black high school graduates is approximately 57 percent of white high school graduates, but the income of black *college* graduates is 87 percent of white college graduates). "Whatever the reasons for the continuing economic disparities between the races, it is certain that a college education, more than any other factor, serves to break down racial stereotypes, increase opportunities for African Americans, and decrease the economic gap between blacks and whites." *Id.*

[72] Thomas Kane, Racial and Ethnic Preference in College Admissions 13-14 (1997) (Paper presented at recent conference on affirmative action and university admissions).

Consider, once again, the medical profession. It is clear that there is an underrepresentation of black physicians in society.[73] Furthermore, there may be an instrumental value to having a sufficient number of black physicians in society (not to be confused with the interest discussed above in providing under-served segments of society with physicians of any race). Simply put, while physicians of all races are capable of providing quality care, black physicians may, in some cases, provide better care for black patients.[74] This could be true for several reasons: First, there is evidence that black patients are more likely to visit black physicians. This is true even after controlling for the proportion of black residents living in the given community.[75] This may indicate that black patients feel more comfortable visiting black physicians. Thus, increasing the number of black physicians could lead to an increase in preventive care and early detection of illness as more black patients would more readily seek medical attention. Second, black physicians may be more likely to understand "the cultural and social context of illness and disability among blacks."[76] For example, the unique social pressures facing African Americans, such as issues of status and discrimination, can cause great stress, which can promote disease and illness. A black physician is likely to better understand these pressures and to more easily factor them into his/her diagnosis.[77] Third, black physicians may be able to communicate with black patients more easily, which is crucial because medical evaluation is itself a social interaction.[78] For all these reasons and more, it is possible, though perhaps not probable, that the Supreme Court could find that affirmative action in medical school admissions is necessary to further the compelling interest in providing health care to all citizens.[79] However, the question remains whether some actor besides a university, such as the federal government, is the more appropriate actor to make that determination.

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[73] *E.g.*, Sterling M. Lloyd & Russell L. Miller, *Black Student Enrollment in U.S. Medical Schools*, 261 J. of Am. Medical Assoc. 272 (1989) ("Blacks continue to be underrepresented in the medical schools of this country and in the profession of medicine. Blacks represent about 12% of the nation's population, but only 6% of total medical school enrollment, 5% of medical school graduates, 5% of postgraduate trainees, 3% of physicians in practice, and 2% of medical school faculties.").

[74] *Id.* at __.

[75] Komaromy, et al., *supra* note 66, at 1301-08.

[76] Lloyd & Miller, *supra* note 73, at __.

[77] *See* Clovis E. Semmes, Racism, Health, and Post-Industrialism: A Theory of African-American Health 131-34 (1996).

[78] Lloyd and Miller, *supra* note 73, at __.

[79] *See Bakke*, 438 U.S. at 310-11 (opinion of Powell, J.) (indicating that the state's interest in "facilitating the health care of its citizens" is potentially compelling).

C. Objective of Promoting Racial Diversity

Objectives are concrete, operational aims that are linked to the non-operational goals/interests by evidence and analytical presumptions,[80] as illustrated above. In the case of affirmative action in university admissions, the objective is *promoting racial diversity in the student body*, by which I mean *increasing minority representation at predominantly white universities*. However, vague objectives, such as "promoting racial diversity," are sometimes dangerous because they lead to confused, imperfect policy choices.[81] What makes an objective "operational" is that it is defined precisely enough so that it is easy to understand what is expected and to determine whether the objective has been achieved. In the case of affirmative action in university admissions, this need to clearly articulate a policy's objective raises additional questions: Exactly what level of racial diversity is appropriate? And for how long should it be pursued?[82]

The proper level of diversity a university should pursue and how long a university should pursue it naturally depends on what goal(s) of higher education it is trying to promote. For example, if the goal or interest is remedying racial stratification in society, then the appropriate level of diversity is likely tied to the lack of minorities at certain levels in society. This conclusion illustrates why it is unlikely that the goal of remedying racial stratification will be found to be compelling in most cases. Promoting this interest would permit a discrete university to use affirmative action to admit any number of minority applicants it believed appropriate until societal discrimination was remedied, a situation the Supreme Court has clearly rejected.[83]

However, if the interests a university is seeking to serve are promoting teaching and learning or enhancing civic values among its students, then the appropriate levels of diversity are tied to the levels

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[80] *See* Zelikow, *supra* note 5, at 162.

[81] *Id.* at 162-64.

[82] When talking about numbers, it is obviously important to distinguish between targets and quotas. The use of quotas in affirmative action is clearly unconstitutional, *see, e.g.*, Bakke, 438 U.S. at 314-20, in part because using a quota encourages the recruitment of enough minorities to fill the quota regardless of qualifications, *see* Amar & Katyal, *supra* note 13, at 1751. Numerical targets are intended to be more flexible and aspirational. Numerical targets in affirmative action establish the ideal while recognizing that meeting the targets depends on the availability of qualified minority applicants.

[83] *See, e.g.*, *Bakke*, 438 U.S. at 307-10 (opinion of Powell, J.) ("[T]he purpose of helping certain groups whom the faculty of the Davis Medical School perceived as victims of 'societal discrimination' does not justify a classification that imposes disadvantages upon persons like respondent, who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered. To hold otherwise would be to convert a remedy heretofore reserved for violations of legal rights into a privilege that all institutions throughout the Nation could grant at their pleasure to whatever groups are perceived as victims of societal discrimination. That is a step we have never approved.").

necessary to achieve those goals by promoting discussions and interactions among students of different races. In other words, some specific level of minority representation on campus is obviously required to create sufficient opportunities for communication and interactions across racial lines.

Given the lack of direct evidence concerning the value of diversity to promoting teaching and learning and instilling civic values, we obviously do not know what level of minority enrollment is optimal. One point of agreement between proponents and opponents of diversity-based affirmative action seems to be that proportionality in racial representation is not necessarily required to further those educational goals.[84] Furthermore, many education leaders believe that minority participation and interaction across racial lines are dependent upon the level of comfort minorities feel on campus. This raises the notion of "critical mass."[85] Even on this point, however, the available pedagogical literature is limited and difficult to interpret. There is substantial evidence that black students attending predominantly white universities experience greater levels of alienation and isolation than their white counterparts at predominantly white universities or their black counterparts at historically black universities.[86] Furthermore, there is evidence that the social and academic adjustment of black students at predominantly white universities is enhanced by communalism, meaning the tendency for a black student to see him/herself as part of a black community.[87] "The communal student may be more likely to draw from the support of Blacks on campus or in the surrounding community, thereby uniting with community members in the face of adversity rather than withdrawing in isolation."[88] Thus a critical mass of black students may increase the level of comfort of black students on campus by providing such a black community.

This, however, highlights the concern that a "critical mass" might make minority students feel more comfortable only because they are able to self-segregate within their own racial or ethnic communities, thereby actually decreasing cross-racial interactions. There is some evidence of such

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[84] *Compare* Amar & Katyal, *supra* note 13, at 1777 (supporting non-remedial affirmative action) ("A critical mass of students of a particular group may be needed so that other students become aware of the group (and of the diversity within the group), but this by no means requires exact proportionality -- or anything like it.") *and* Chin, *supra*, note 47, at 894 (opposing non-remedial affirmative action) ("The theory of Bakkean diversity is that it may be beneficial for persons who are not members of a particular group to have contact with others who are. Accordingly, the number of minority students admitted is driven not by the percentage of minorities in the population, but by the number needed to achieve that goal of educational diversity.").

[85] *See, e.g.*, Chin, *supra* note 47, at 921 ("Diversity proponents often argue that a 'critical mass' of minority students is necessary to ensure that the students are socially comfortable.").

[86] *See, e.g.*, Walter R. Allen, *The Color of Success: African-American College Student Outcomes at Predominantly White and Historically Black Public Colleges and Universities*, 62 Harv. Ed. Rev. 26 (Spring 1992); Pascarella & Terenzini, *supra* note 11, at 380.

[87] Chalmer E. Thompson & Bruce R. Fretz, *Predicting the Adjustment of Black Students at Predominantly White Institutions*, 62 J. of Higher Ed. 437, 437-38 (July/Aug. 1991).

[88] *Id.*

"Balkanization," but recent studies indicate that a "critical mass" of minority students will not necessarily result in self-segregation.[89] Cross-racial interaction will occur *as long as universities seek to promote such cross-racial interaction.* In other words, in addition to numbers, "the results of efforts to increase diversity on our campuses may depend very much on what kinds of learning environments are created."[90]

Finally, the issue of whether affirmative action in higher education intended to promote teaching and learning and enhance civic values has a clear stopping point in terms of how long it should be used is more difficult. Given the nature of these goals, it seems logical that a university should use affirmative action, if necessary, to promote racial diversity until race no longer has substantial educational value, which is likely tied to the role of race in society and, thereby, to the existence of societal discrimination.[91] But perhaps the distinction here is that universities are not trying to directly overcome past societal discrimination by acting as the self-proclaimed leaders of social readjustment for discrete racial groups. Rather, universities are simply recognizing the reality of societal discrimination and its relevance to the fulfillment of their core goal: providing a complete education (intellectual, vocational, civic, moral, etc.) *for all of their students*. Whether this is a distinction with a difference likely depends on how compelling the Court finds the goals of promoting teaching and learning and instilling civic values to be.

D. Strategy of Affirmative Action

A strategy is a general plan of action designed to achieve the desired objective(s) and thereby promote the larger goals.[92] The strategy at issue here is *race-based affirmative action in student admissions*. It is the use of this *race-based* strategy that implicates strict scrutiny and requires universities to show that the strategy is narrowly tailored to serve a compelling interest.

However, recent comments and actions by members of the higher education community and others indicate a lack of understanding or appreciation for what it means for a strategy to be "race-based" and thereby trigger strict scrutiny. Some education leaders and researchers are encouraging the development of

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[89] *See, e.g.*, Troy Duster, *The Diversity of California at Berkeley: An Emerging Reformulation of "Competence" in an Increasingly Multicultural World, in* Beyond a Dream Deferred 231, 237 (1993) ("Our research revealed that while the student body is segmented along racial and ethnic lines, there are some important, good social relations and collective problem solving across racial and ethnic lines."); Sylvia Hurtado, Eric L. Dey & Jesus G. Trevino, Exclusion or Self-Segregation? Interaction Across Racial/Ethnic Groups on College Campuses, Paper presented at the Annual Meeting of the American Educational Research Association (1994) (finding that, in terms of informal interactions, "African Americans are more likely to interact across groups than are whites.").

[90] Bowen, *supra* note 70, at 21.

[91] *See* Note, *supra* note 16, at 1363-63.

[92] *See* Zelikow, *supra* note 5, at 164-65.

admissions schemes intended to promote racial diversity by using facially race-neutral criteria, such as social class.[93] But what implicates so-called strict scrutiny in constitutional analysis is not merely facially race-based action but also intent to discriminate based on race.[94] In other words, if the intent of a university in adopting a facially race-neutral admissions policy is to achieve *racial* diversity, it is subject to the same legal standard as if its admissions program were facially race-based. The law scrutinizes covert race-based actions as stringently as overt race-based actions. Therefore, there may be little value in developing such facially race-neutral admissions programs.[95] In any case, the data overwhelmingly indicate that the use of facially race-neutral factors, such as social class, is not likely to yield a racially diverse student body.[96]

Whether it is facially or just intentionally race-based, the Supreme Court will uphold affirmative action in higher education only where it serves a compelling interest and is narrowly tailored to achieve that interest. The compelling interest prong was addressed above. The narrowly tailored prong requires

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[93] *See, e.g.*, Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. Rev. 1, 48 (forthcoming, 1997).

[94] *See, e.g.*, Arlington Heights v. Metro. Hous. Dev., 429 U.S. 252, 264-71 (1977) (indicating that strict scrutiny is implicated where a racially discriminatory purpose is shown to have been a "motivating factor" in the adoption of a facially race-neutral policy or program). The existence of a discriminatory purpose is determined by examining a number of factors including the events leading up to the program's adoption and statements made by members of the given decisionmaking body. *Id.* at 267-68.

[95] Two caveats to this point are perhaps warranted: (1) Once a facially race-neutral program is shown by the plaintiff to have been motivated by a racially discriminatory purpose (i.e., to promote racial diversity), then the burden technically shifts back to the defendant to show that the program would have been adopted even without that factor. *Id.* at 271 n.21. Therefore, to the extent that universities can justify the adoption of race-neutral admissions criteria that promote racial diversity on grounds independent of their intent to promote racial diversity (i.e., for other legitimate educational reasons), such criteria likely have a better chance of being upheld. *See* Michael Williams, *Racial Diversity Without Racial Preferences*, Chron. of Higher Ed., Nov. 15, 1996, at A64. (2) An argument can be made that facially race-neutral efforts such as widening the scope of student recruitment may be immune from equal protection challenge even if the intent is to recruit minority students, perhaps because such programs cause no injury to non-minority students (i.e., recruitment has no discriminatory effects). *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (indicating that the "irreducible constitutional minimum of standing" requires "injury in fact"). *But cf.* Miller v. Johnson, 115 S. Ct. 2475, 2485 (1995); Shaw v. Reno, 509 U.S. 630, 641-42 (1993) (holding that a voter residing in a racially gerrymandered district has standing to challenge the redistricting plan because he/she has been injured by having been treated not as an individual but as a member of a racial group.).

[96] *E.g.*, Robert Bruce Slater, *Why Socioeconomic Affirmative Action in College Admissions Works Against African Americans*, J. of Blacks in Higher Ed. 57-59 (Summer 1995) (showing that using socio-economic status in admissions at selective universities would result in little more racial diversity than a race-blind system that did not include socio-economic status); Wightman, *supra* note 93, at 48-59 (finding that neither socio-economic status, selectivity of undergraduate school, or undergraduate major if used as factors in law school admissions would result in racial diversity similar to that presently achieved under affirmative action); Kane, *supra* note 72, at 18-19 (finding that because the majority of low-income families are white, a college presently administering a race-based affirmative action admissions plan would have to "grant preferences to six times as many low-income students to 'yield' the same number of black and Hispanic freshmen"). "No race-blind substitute is likely to cushion the effect of an end to racial preferences. The problem is one of numbers." *Id.* at 17.

primarily that the race-based strategy of affirmative action be necessary in the sense that there are no truly race-neutral (i.e., neither facially or intentionally race-based) means available to achieve the compelling interest(s). If race-neutral means are available, race-based means cannot be utilized. For example, as explained above, it is possible to implement race-neutral means to promote the goal of remedying the lack of essential-service providers in society. A university could, for example, reserve admissions slots for students who pledge to practice in under-served communities after graduation.[97] Because such race-neutral means are available, race-based affirmative action programs designed to achieve that goal are unlikely to pass strict scrutiny even if the goal is found to be compelling.

However, it is more difficult to see how race-neutral means could effectively achieve the remaining goals of higher education presented above (assuming they are found to be compelling). For example, with regard to the goals of promoting teaching and learning and enhancing civic values among all students, the very point is to expose students to different racial perspectives and to promote racial understanding. It is unlikely that these goals could be fully achieved without promoting at least some level of racial diversity.[98] Furthermore, the evidence indicates that absent intentional efforts to promote the admission of certain minorities to selective universities, racial diversity at those institutions would be decimated.[99] Therefore, assuming that either of the goals of promoting teaching and learning or instilling civic values is found to be compelling, affirmative action in student admissions, properly designed, would likely be a narrowly tailored means of achieving that goal.

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[97] Even if the effect of such a program was to increase racial diversity, it would not be subject to strict scrutiny because it was not facially or intentionally race-based. *See, e.g.*, Personnel Administrator of Mass. v. Feeney, 442 U.S. 256 (1979) (upholding a Massachusetts veterans' preference policy even though the legislature was fully aware that the policy would have a discriminatory effect on women).

[98] Possible race-neutral means likely include incorporating multicultural ideas into the university curriculum and/or formalizing efforts to promote racial ethics. Therefore, universities may have to present evidence that such race-neutral efforts are not likely to be effective in racially homogeneous (i.e., all white) environments. Furthermore, to the extent that such race-neutral means are likely to be even partially successful, the Court may look more favorably on the use of affirmative action if those race-neutral means are used in tandem with affirmative action. *See* Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 589-90, 590 n.3 (citing with approval the FCC's prior and continued use of race-neutral means).

[99] *See, e.g.*, Slater, *supra* note , at 57 ("[I]f admissions at [the nation's most prestigious universities] were made on the basis of grade point average and SAT scores, and without regard to race, perhaps 1 percent or 2 percent of all students accepted for admission to these schools would be black."); Wightman, *supra* note 93, at 19-27 (showing that minority admissions to ABA accredited law schools would decrease significantly if only race-neutral criteria were used); Bowen, *supra* note 70, at 19 (finding that the use of exclusively race-blind criteria at selective universities would reduce black enrollment from approximately 8 percent to 2 percent).

E. Design of Race as "Plus" Factor

Simply put, policy design is a detailed statement of the strategy.[100] In the case of affirmative action in university admissions, the legally required design is dictated by Justice Powell's decision in *Bakke*. In order for a university's affirmative action program to pass constitutional muster, it must avoid racial quotas and seek to promote a broad-based, individualistic notion of diversity in which race is "but a single though important element."[101] In other words, race may only be deemed a *single "plus" factor* in a particular candidate's file. Admissions programs that do not follow this design will not pass strict scrutiny.

It is perhaps appropriate to inquire whether this design of affirmative action, where race is just one element of diversity among many, can truly result in a racially diverse student body, or whether this individualistic notion of diversity is a sham because race is really the predominant factor in student admissions. The evidence indicates that while race is only a factor in admissions at the most selective universities, it is a substantial factor at those institutions. According to a recent study, at those selective universities with average SAT scores in the top 20 percent of all four-year institutions, black and Hispanic applicants were found to be 8-10 percent more likely to be admitted than white students with similar qualifications.[102] "This differential was as large as that associated with having an A- average in high school rather than a B or having an SAT score of 1400 rather than 1000."[103]

However, for several reasons, this does not necessarily mean that *Bakke's* "plus factor" design is a sham: First, the *primary* factor in admissions is always prior academic achievement (i.e., all students admitted, through affirmative action or otherwise, come from the pool of qualified candidates).[104] Second, it is clear that universities seek to promote diversity in student admissions based on multiple factors in addition to race (e.g., geographic diversity).[105] But many of these factors are likely well represented at all levels of highly qualified students. Therefore, a university may not have to take as substantial affirmative action to achieve diversity with regard to most of these characteristics. Third, universities do give substantial weight to other particularistic factors beyond race in student admissions. The most obvious example is alumni preferences, which the evidence indicates are more substantial then race-based

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[100] *See* Zelikow, *supra* note 5, at 166.
[101] *Bakke*, 438 U.S. at 315 (opinion of Powell, J.).
[102] Kane, *supra* note 72, at 8-9.
[103] *Id.*
[104] *See, e.g.*, Bowen, *supra* note 70, at 10.
[105] *See, e.g., Citizens Commission on Civil Rights*, The Resource: An Affirmative Action Guide 9A (1996) (indicating that the University of California at Los Angeles (UCLA) considers not fewer than 17 factors in its admissions process).

preferences at selective universities.[106] Fourth, race is likely given substantial weight in admissions at selective universities when choosing among qualified applicants because, as I hope I have explained throughout this paper, racial diversity is an important resource for achieving the goals of higher education -- certainly much more important than diversity in children of alumni.

III. Conclusion

The above policy analysis indicates that there is likely a strong case to be made for affirmative action in university admissions designed to promote the objective of increasing racial diversity in the student body and to further the various goals of higher education that flow from it. However, making the case for affirmative action in higher education will require an immediate, substantial commitment from the higher education community. For nearly 20 years, the higher education community has relied on Justice Powell's decision in *Regents of the University of California v. Bakke* as its sole justification for affirmative action in higher education. This reliance has bred complacency. The Fifth Circuit's decision in *Hopwood v. Texas* can be either a clarion call or a death knell.

This paper has sought to serve as a first step in making the case for affirmative action in higher education by reconceptualizing the legal debate into a policy-oriented framework that clearly identifies the possible arguments in support of non-remedial affirmative action in higher education and highlights what needs to be done to make those arguments most effectively. Based on that analysis, I conclude that affirmative action programs designed to further the goals of enhancing civic values and promoting teaching and learning are most likely to pass strict scrutiny and that the weakest link in the chains of argument supporting those goals is likely the lack of substantial evidence indicating that promoting racial diversity furthers those goals. The limited evidence that exists indicates that achieving racial diversity can promote teaching and learning and enhance civic values when coupled with efforts to promote constructive interactions among students of different racial groups. Therefore, in order to make the case for affirmative action in higher education, universities must increase their efforts to use the resource of racial diversity more effectively and to evaluate it more rigorously.

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[106] *See, e.g.*, John Larew, *Who's the Real Affirmative Action Profiteer?, in* Debating Affirmative Action 247, 250 Nicolaus Mills ed., 1994) ("At most elite universities during the eighties, the legacy was by far the biggest piece of the preferential pie.").

An Overview of the Law Governing Non-Remedial Affirmative Action in Higher Education

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Preliminary Draft

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An Overview of the Law Governing Non-Remedial Affirmative Action in Higher Education

I. Introduction

The law governing affirmative action in higher education is at a crucial point in its development. Several recent decisions by the Supreme Court, most notably *Adarand Constructors, Inc. v. Pena*,[1] evidence a clear trend toward the universal, rigid application of so-called strict scrutiny in evaluating *all* race-based policies and programs. Some legal commentators have argued that this trend may "sound the death knell" for affirmative action in higher education and especially for the non-remedial interest in promoting educational diversity.[2] *Hopwood v. Texas*,[3] in which the Fifth Circuit rejected educational diversity as a compelling interest and held unconstitutional the affirmative action admissions program at the University of Texas School of Law, is obviously a manifestation of that view. However, there is also a competing conception of the present state of affirmative action based on the notion, recently endorsed by a majority of the Court, that strict scrutiny is not "fatal in fact."[4] That view is embodied in the recent, countervailing case of *Wittmer v. Peters*,[5] in which the Seventh Circuit upheld an affirmative action employment program for correctional officers at a "boot camp" in order to further the state's compelling interest in the "pacification and reformation" of youth offenders. *Wittmer*, though occurring outside the higher education context, provides a potentially powerful rebuttal to *Hopwood* and illustrates that the law governing affirmative action can best be understood as being unsettled. This brief paper provides an overview of the present legal standards relevant to affirmative action in higher education, focusing specifically on the diversity rationale, and contrasts the cases of *Hopwood* and *Wittmer*.

II. Legal Background: Developing the Present Legal Standards

In its broadest terms, the legal standard governing race-based affirmative action, both in the context of higher education and more generally, is likely settled, though its meaning remains unclear.

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[1] 115 S. Ct. 2097 (1995).

[2] *E.g.*, Leland Ware, *Tales From the Crypt: Does Strict Scrutiny Sound the Death Knell for Affirmative Action in Higher Education*, 23 J.C. & U.L. 43, 44 (1996); Donald L. Beschle, *"You've Got to Be Carefully Taught": Justifying Affirmative Action After Croson and Adarand*, 74 N.C. L. Rev. 1141, 1180 (1996).

[3] 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).

[4] *E.g.*, Adarand, 115 S. Ct. at 2117 ("[W]e wish to dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" (*quoting* Fullilove v. Klutznick, 448 U.S. 448, 519 (1980) (Marshall, J., concurring in the judgment))); *id.* at 2136 (Ginsburg, J., dissenting, joined by Breyer, J.).

[5] 87 F.3d 916 (7th Cir. 1996), *cert. denied*, 65 USLW 3416 (1997).

Under the constitutional requirement of equal protection, race-based classifications are "inherently suspect."[6] "Th[e] Court has 'consistently repudiated "[d]istinctions between citizens solely because of their ancestry" as being "odious to a free people whose institutions are founded upon the doctrine of equality."'"[7] Race-based policies or programs will be upheld only where they pass so-called strict scrutiny. Strict scrutiny requires that a given affirmative action program (1) serve a compelling interest and (2) be narrowly tailored to achieve that interest.[8]

The strict scrutiny standard now applies regardless of whether the given affirmative action program constitutes federal action challenged under the Fifth Amendment,[9] state action challenged under the Fourteenth Amendment,[10] or private action challenged under Title VI, which prohibits discrimination by any actor receiving federal financial assistance, including most if not all private universities.[11] The standard governing private action challenged under Title VII, which prohibits discrimination in employment, is less clear, but analogous.[12] Furthermore, strict scrutiny applies regardless of whether the affirmative action program at issue seeks to achieve so-called invidious or benign goals (i.e., whether the program seeks to benefit the white majority or historically disadvantaged minorities).[13]

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[6] Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 273 (1986) (plurality opinion) (*citing* Regents of the University of California v. Bakke, 438 U.S. 265, 291 (1978)).

[7] *Id.* (*quoting* Loving v. Virginia, 388 U.S. 1, 11 (1967) (*quoting* Hirabayashi v. United States, 320 U.S. 81, 100 (1943))).

[8] *E.g.*, *Adarand*, 115 S. Ct. at 2113.

[9] *See id.* ("[W]e hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." (*overruling* Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990), on this point)). The Fifth Amendment states that "[n]o person shall be. . . deprived of life, liberty, or property, without due process of law." The Due Process Clause has been held to embrace notions of equal protection. *See, e.g.*, Bolling v. Sharpe, 347 U.S. 497 (1954).

[10] *E.g.*, Richmond v. J.A. Croson Co., 488 U.S., 469, 493-94 (1989) (O'Connor, J., plurality opinion joined by Rehnquist, C.J., White, and Kennedy, JJ.); *id.* at 520 (Scalia, J., concurring). The Fourteenth Amendment mandates that "[n]o State shall. . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

[11] Title VI of the Civil Rights Act of 1964 reads, "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. The Supreme Court has held that Title VI is coextensive with the Fourteenth Amendment. United States v. Fordice, 505 U.S. 717, 732 n.7 (1992) (*citing Bakke*, 438 U.S. at 287, 328; Guardians Assn. v. Civil Service Comm'n of New York, 463 U.S. 582, 610-11, 612-13, 639-43 (1983)).

[12] Title VII of the Civil Rights Act of 1964 reads, "It shall be an unlawful employment practice for an employer. . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2. The Supreme Court has held that affirmative action is justified under Title VII where the given program is designed to "eliminate a manifest racial imbalance" in the work force (at least in "traditionally segregated job categories") and does not "unnecessarily trammel" the interests of non-minorities. *See, e.g.*, United Steelworkers of America v. Weber, 443 U.S. 193, 208 (1979).

[13] *See. e.g.*, *Adarand*, 115 S. Ct. at 2111-14 ("[A]ny person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal

"[T]he purpose of strict scrutiny is to 'smoke out' illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool. The test also ensures that the means chosen 'fit' this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype."[14] Thus, the strict scrutiny standard is meant to examine both the ends and the means: "In short, the compelling interest inquiry centers on 'ends' and asks *why* the government is classifying individuals on the basis of race or ethnicity; the narrow tailoring focuses on 'means' and asks *how* the government is seeking to meet the objective of the racial or ethnic classification."[15]

The Supreme Court's efforts to clearly define what interests are sufficiently compelling to justify race-based actions have been hampered by several conflicting principles. First, where race-based actions are necessary and appropriate (e.g., to remedy past discrimination), the Court likely wants to encourage institutions to take such actions on a voluntary basis.[16] However, the Court is also clearly concerned about endorsing race-based remedies that are insufficiently tied to specific acts or discrete goals, thereby promoting race-based actions that are "ageless in their reach into the past and timeless in their ability to

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treatment under the strictest judicial scrutiny."). The Court's decision to apply strict scrutiny to all racial classifications is grounded in the notion that the Fourteenth Amendment protects individual rights, not group rights. In other words, it protects each individual's right not to be judged according to his/her race except in exceptional circumstances. *Id.* at 2111 (*quoting* Bakke, 438 U.S. at 299 (opinion of Powell, J.) (*citing* Shelley v. Kraemer, 334 U.S. 1 (1948))). Furthermore, according to the Court, the very purpose of strict scrutiny is to distinguish the benign from the invidious justifications for race-based actions. "Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *Id.* at 2112.

Nonetheless, powerful counter-arguments can be made to the Court's decision to extend strict scrutiny to so-called benign race-based programs. As Justice Stevens argued in dissent in *Adarand*:

> The Court's concept of "consistency" assumes that there is no significant difference between a decision by the majority to impose a special burden on the members of a minority race and a decision by the majority to provide a benefit to certain members of that minority notwithstanding its incidental burden on some members of the majority. In my opinion that assumption is untenable. There is no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one that is designed to eradicate racial subordination. Invidious discrimination is an engine of oppression, subjugating a disfavored group to enhance or maintain the power of the majority. Remedial race-based preferences reflect the opposite impulse: a desire to foster equality in society. . . . The consistency that the Court espouses would disregard the difference between a "No Trespassing" sign and a welcome mat.

Id. at 2120-21 (Stevens, J., dissenting).

[14] *Id.* at 2112 (*quoting Croson*, 488 U.S. at 493).

[15] Memorandum to General Counsels from Walter Dellinger, Assistant Attorney General, U.S. Dep't of Justice 10 (June 28, 1995).

[16] *See, e.g., Wygant*, 476 U.S. at 290 (O'Connor, J., concurring) (noting the Court's and Congress's "consistent emphasis on 'the value of voluntary efforts to further objectives of the law'") (*quoting* Bakke, 438 U.S. at 364 (opinion of Brennan, J.)).

affect the future."[17] Second, in order to decrease the role of race in society, the Court likely wants to promote an individualistic notion of society rather than a pluralistic one.[18] However, the reality is that individuals define themselves, and are in turn defined, in part by their group affiliations. Man is, after all, a social animal. The Court has reacted to these competing pressures, in part, by requiring a "strong basis in evidence" for the belief that a voluntary affirmative action program is warranted.[19]

In the context of higher education, and more generally, the Supreme Court has to date found only two interests sufficiently compelling to justify voluntary, race-based affirmative actions: (1) remedying the present effects of past discrimination[20] and (2) realizing the educational benefits that flow from a racially diverse student body.[21] Each of these interests are discussed in greater detail below. Furthermore, the Court has expressly rejected several interests as not sufficiently compelling to justify race-based actions: First, the Court has repeatedly held that the interest in remedying so-called societal discrimination is insufficient to justify affirmative action by any entity except perhaps the federal government: "[A]s the basis for imposing discriminatory legal remedies that work against innocent people, societal discrimination is insufficient and overexpansive."[22] Second, the Court, or at least Justice Powell, has held that the interest in increasing the number of minorities in a given profession is insufficient to justify affirmative action by a university.[23] Justice Powell's analysis of this interest, however, was cursory. He seemed to view this goal as equivalent to valuing race for race's sake. Third, the Court, or at least Justice Powell, has held that the interest in increasing the number of professionals practicing in under-served communities is insufficient to justify affirmative action by a university.[24] However, Justice Powell based his holding primarily on the absence of any evidence indicating that the program at issue was either necessary or designed to promote that goal. Fourth, the Court has held that the interest in providing "role models" for minority students is insufficient to justify affirmative action in faculty hiring.[25] The Court seemed to equate this goal with the

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[17] *Croson*, 488 U.S. at 498.

[18] *See, e.g., Adarand*, 115 S. Ct. at 2111(indicating that the Fourteenth Amendment protects each individual regardless of, not because of, his/her membership in a particular group).

[19] *See, e.g., Wygant*, 476 U.S. at 277-78; *Croson*, 488 U.S. at 500.

[20] *See, e.g., Wygant*, 476 U.S. at 286 (O'Connor, J., concurring).

[21] *See Bakke*, 438 U.S. at 311-15 (opinion of Powell, J.) *But see* Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996) (rejecting the idea that Justice Powell's statement concerning educational diversity constituted a holding of the Court).

[22] *Wygant*, 476 U.S. at 276. The Court in *Adarand* remanded the question of whether the interest in remedying general societal discrimination is a sufficiently compelling interest to justify affirmative action by the federal government when acting under section 5 of the Fourteenth Amendment. *Adarand*, 115 S. Ct. at 2118.

[23] *Bakke*, 438 U.S. at 306-07 (opinion of Powell, J.).

[24] *Id.* at 310-11.

[25] *Wygant*, 476 U.S. at 274-76 (plurality opinion).

goal of alleviating general societal discrimination, and the interest in promoting educational diversity was expressly distinguished.[26]

Finally, assuming that a given affirmative action program is found to serve a compelling interest, the Court has identified several factors to be considered in determining whether the program is narrowly tailored to achieve that interest:

> As it has been applied by the courts, the factors that typically make up the "narrow tailoring" test are as follows: [1] whether the government considered race-neutral alternatives before resorting to race-conscious action; [2] the scope of the affirmative action program and whether there is a waiver mechanism that facilitates the narrowing of the program's scope; [3] the manner in which [it] is used, that is, whether race is a factor in determining eligibility for a program or whether race is just one factor in the decisionmaking process; [4] the comparison of any numerical target to the number of qualified minorities in the relevant sector or industry; [5] the duration of the program and whether it is subject to periodic review; and [6] the degree and type of burden caused by the program.
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> [T]hree general points about the narrow tailoring test deserve mention. First, it is probably not the case that an affirmative action measure has to satisfy every factor. A strong showing with respect to most of the factors may compensate for a weaker showing with respect to others. Second, all of the factors are not relevant in every case. . . . The factors may play out differently where a program is non-remedial. Third, the narrow tailoring test should not necessarily be viewed in isolation from the compelling interest test. To be sure, the inquiries are distinct: as indicated above, the compelling interest inquiry focuses on the ends of an affirmative action measure, whereas the narrow tailoring inquiry focuses on the means. However, as a practical matter, there may be interplay between the two.[27]

A. Remedial Interest in Overcoming the Present Effects of Past Discrimination

A solid majority of the Supreme Court agrees that the remedial interest in overcoming the present effects of past discrimination is a sufficiently compelling interest to support race-based affirmative action.[28] The real debate here is over the scope of this interest. What "past discrimination" is sufficient to justify affirmative action? What "present effects" are sufficient? What evidentiary link must be

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[26] *Id.* at 289 n.* (O'Connor, J., concurring).

[27] Memorandum to General Counsels from Walter Dellinger, *supra* note 15, at 19-20. *See also* United States v. Paradise, 480 U.S. 149, 171 (1987) (plurality opinion); *id.* at 187 (Powell, J., concurring).

[28] *See, e.g., Wygant*, 476 U.S. at 286 (O'Connor, J., concurring) ("The Court is in agreement that, whatever the formulation employed, remedying past or present racial discrimination by a state actor is a sufficiently weighty interest to warrant the remedial use of a carefully constructed affirmative action program."). All of the justices would undoubtedly agree that where present, intentional discrimination has been established, some form of prospective remedy is appropriate. But they differ in the extent to which they approve of group-based remedies to correct for past injustices against other members of the group. Nonetheless, only Justice Scalia and perhaps Justice Thomas have "adopted anything that approaches a blanket prohibition on race-conscious remedies." Memorandum to General Counsels from Walter Dellinger, *supra* note 15, at 6.

established between the "past discrimination" and the "present effects"? In examining these questions in the context of higher education, it is useful to distinguish between when a university *must* take affirmative action to overcome the present effects of past discrimination and when it *may* take such action.

1. When Universities *Must* Take Affirmative Action to Remedy Prior Discrimination

The Supreme Court in *United States v. Fordice*[29] defined what remedial actions states are required to take to dismantle their prior *de jure* segregated systems of higher education. *Fordice* involved a challenge to Mississippi's university system under the Fourteenth Amendment and Title VI alleging that the state had failed to take the required steps to dismantle its prior *de jure* segregated system. Mississippi adopted facially race-neutral university admissions policies in the 1960s, but by the mid-1980s, Mississippi's university system remained racially segregated.[30] The Court in *Fordice* held:

> [A] State does not discharge its constitutional obligations until it eradicates policies and practices traceable to its prior de jure dual system that continue to foster segregation. . . . If policies traceable to the de jure system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound educational practices."[31]

Fordice thus requires states to do more to desegregate their universities than simply adopt facially race-neutral admissions policies. Rather, states must at a minimum seek to establish effective neutrality.[32]

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[29] 505 U.S. 717 (1992).

[30] *Id.* at 724-25.

[31] *Id.* at 728-29 (holding several policies of Mississippi's university system "constitutionally suspect" under this standard).

[32] Prior to *Fordice*, the Court held, with regard to primary and secondary schools, that "separate educational facilities are *inherently* unequal." Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954) (emphasis added). States that had been operating *de jure* segregated systems of primary and secondary education at the time of *Brown* had an affirmative obligation to cure the effects of that prior segregation. *See, e.g.*, Green v. New Kent County School Bd., 391 U.S. 430, 437-38 (1968) ("School boards . . . operating state-compelled dual systems [at the time of *Brown*] were . . . clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch"). However, in *Bazemore v. Friday*, 478 U.S. 385 (1986), the Court held, with regard to state-funded and -operated clubs that had been *de jure* segregated, that states had an obligation only to adopt facially race-neutral membership policies. Thus, the question in *Fordice* was, in effect, whether college and universities were more like primary and secondary schools or like voluntary clubs. One way to understand the decision in *Fordice* is that the Court adopted a middle-ground. *Fordice* in effect creates a presumption that any university practice emanating from the *de jure* segregated era and continuing to have discriminatory effects is viewed as intentional discrimination and thus subject to strict scrutiny. This reading of *Fordice* is perhaps modest because it is not that different from other cases that have held that the intent to discriminate is judged from the time at which the law or policy at issue was originally adopted. *See, e.g.*, Hunter v. Underwood, 471 U.S. 222 (1985) (holding unconstitutional a provision of the Alabama Constitution of 1901, which disenfranchised persons convicted of crimes of moral turpitude, based on general evidence that the provision was originally enacted for a discriminatory purpose).

But the precise meaning of the Court's holding in *Fordice* is somewhat unclear, and key questions remain unanswered: First, what remedies are appropriate under *Fordice*? Clearly a state must eliminate offending policies and practices traceable to the *de jure* era, but may a state opt to counter the effects of such policies and practices where their elimination is not feasible by adopting affirmative action programs? Justice O'Connor suggested in her concurrence in *Fordice* that states can and may be required to take such affirmative actions: "Only by eliminating a remnant that unnecessarily continues to foster segregation *or by negating as possible its segregative effects* can the State satisfy its constitutional obligation to dismantle the discriminatory system that should, by now, be only a distant memory."[33] Second, *Fordice* defines what actions are *required* by states, but what actions, if any, are states and/or universities permitted to take voluntarily? Can they go farther than *Fordice* mandates? What do they have to demonstrate to be allowed to do so?

2. When Universities *May* Take Affirmative Action to Remedy Prior Discrimination

The legal standard governing what affirmative actions a university *may* take voluntarily to remedy the present effects of past discrimination and when it may do so is somewhat unclear. However, three general principles can perhaps be gleaned from the Supreme Court cases of *Wygant v. Jackson Board of Education*,[34] which concerned the use of affirmative action in faculty employment, and *Richmond v. J.A. Croson Co.*,[35] which concerned the use of affirmative action in government contracting: First, a university cannot (nor can any other actor except perhaps the federal government) take affirmative action to remedy the effects of general societal discrimination. Second, a university can take affirmative action to remedy the present effects of its own past discrimination if it has a "strong basis in evidence" for the belief that such action is warranted. Third, there is some limited support in the Court's holdings for the proposition that a university can take affirmative action to remedy prior discrimination by some other actor(s) to avoid serving as a "passive participant" in a pattern of discrimination.

In *Wygant*, the Court held unconstitutional under the Fourteenth Amendment a collective bargaining agreement between the Jackson Board of Education and the Jackson Education Association (a teachers' union) that gave special protection to minority teachers against layoffs in order to "remedy

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[33] *Fordice*, 505 U.S. at 744-45 (O'Connor, J., concurring) (emphasis added). *See also* Southern Education Foundation, Redeeming the American Promise, 15-16 (1995).
[34] 476 U.S. 267 (1986)
[35] 488 U.S. 469 (1989)

societal discrimination by providing 'role models' for minority schoolchildren."[36] In a plurality opinion, the Court soundly rejected the idea that the interest in overcoming societal discrimination was sufficiently compelling to support affirmative action, and strongly suggested that only an actor's interest in overcoming its own prior discrimination could constitutionally support such race-based action.[37] Furthermore, the Court held that an actor implementing affirmative action to overcome the present effects of its own past discrimination must have "a strong basis in evidence for its conclusion that remedial action was necessary. . . . That is, it must have sufficient evidence to justify the conclusion that there has been prior discrimination."[38] The Jackson Board did not have sufficient evidence of such prior discrimination.[39] Finally, a plurality held that the affirmative action plan at issue was not narrowly tailored, in any case, because layoffs were too great a price for non-minorities to bear.[40]

In her concurring opinion, Justice O'Connor clarified the Court's holding by expressly stating that an actor's remedial purpose "need not be accompanied by contemporaneous findings of actual discrimination to be accepted as legitimate as long as the public actor has a firm basis for believing that remedial action is required."[41] For example, a firm evidentiary basis to support affirmative action in employment could be established by a racial imbalance in the appropriate labor pools sufficient to support a prima facie case under Title VII.[42]

Three years later, in *Croson*, Justice O'Connor authored the part-majority, part-plurality opinion holding unconstitutional under the Fourteenth Amendment the Richmond City Council's Minority Business Utilization Plan, which required a 30 percent minority set-aside for all city-awarded construction contracts in order to remedy past discrimination in the construction industry.[43] Speaking for a majority of the Court, Justice O'Connor again rejected the idea that responding to a general claim of societal discrimination

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[36] *Wygant*, 476 U.S. at 269-84 (plurality opinion).

[37] *Id.* at 274 ("This Court never has held that societal discrimination alone is sufficient to justify a racial classification. Rather, the Court has insisted upon some showing of prior discrimination by the governmental unit involved before allowing limited use of racial classifications in order to remedy such discrimination.").

[38] *Id.* at 277.

[39] *Id.* at 272.

[40] *Id.* at 283 ("While hiring goals impose a diffuse burden, often foreclosing only one of several opportunities, layoffs impose the entire burden of achieving racial equality on particular individuals, often resulting in serious disruption of their lives. That burden is too intrusive.").

[41] *Id.* at 286 (O'Connor, J., concurring).

[42] *Id.* at 292. This requires showing a statistical imbalance between the percentage of minorities employed at a given institution or on a given project and the percentage of qualified minorities in the labor pool. It is yet unclear how this form of evidence would operate in the case of affirmative action in university admissions. It is perhaps possible that a university could define minimum requirements for qualified applicants and then argue that the use of race-blind criteria to distinguish among students within that qualified pool would result in a statistical imbalance in minority representation in the class admitted. Therefore, affirmative action would be justified. This possibility should be explored, but it is beyond the scope of this brief paper.

[43] *Croson*, 488 U.S. at 476-511.

(meaning in this case discrimination within the construction industry) was a sufficiently compelling interest to justify affirmative action. Rather, the Court held that the city of Richmond must have had "a substantial basis in evidence for its conclusion that remedial action was necessary," which again could include evidence of a statistical disparity between the appropriate labor pools sufficient to establish a prima facie case under Title VII.[44] The City Council did not have such evidence in this case.[45] Furthermore, the Court held that the city's plan was not narrowly tailored because there had been no consideration of available race-neutral means and because the 30 percent set-aside was not tied to any goal "except perhaps outright racial balancing."[46] Finally, speaking for a plurality, Justice O'Connor clarified that that the Richmond City Council was not restricted to remedying its own prior discrimination but could, given the proper basis in evidence indicating that such action was necessary, also act to eliminate private discrimination within its jurisdiction.[47]

Wygant and *Croson* arguably left some important room for the adoption of voluntary affirmative action programs designed to remedy the present effects of past discrimination, at least by institutions that had previously been *de jure* segregated. However, two lower federal courts applying these holdings in the context of higher education have applied them rigidly and expansively, and have thus greatly restricted remedial affirmative action programs at universities in those circuits.

First, in *Podberesky v. Kirwan*,[48] the Fourth Circuit held unconstitutional the University of Maryland at College Park's Banneker scholarship program, a merit scholarship program open only to African-American students. The University of Maryland defended the Banneker program as necessary to remedy the present effects of its own past discrimination. Because the University of Maryland had previously been *de jure* segregated and was still under a U.S. Department of Education, Office of Civil Rights mandate to desegregate, establishing prior discrimination was not an issue.[49] Furthermore, the University offered proof that "four present effects of past discrimination exist at the University: (1) The University has a poor reputation within the African-American community; (2) African-Americans are underrepresented in the student population; (3) African-American students who enroll at the University

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[44] *Id.* at 500-02.
[45] *Id.* at 498-506.
[46] *Id.* at 507-08.
[47] *Id.* at 491-92 (plurality opinion) ("[A] state or local subdivision (if delegated the authority from the State) has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction. . . . Thus, if the city could show that it had essentially become a "passive participant" in a system of racial exclusion practiced by elements of the local construction industry, we think it clear that the city could take affirmative steps to dismantle such a system.").
[48] 38 F.3d 147 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 2001 (1995).
[49] *See id.* at 152.

have low retention and graduation rates; and (4) the atmosphere on campus is perceived as being hostile to African-American students."[50] However, the Fourth Circuit held that the evidence presented by the University of Maryland was not sufficient under *Wygant* and *Croson*. According to the court, in order to sustain a remedial affirmative action program, the university was required to show not only proof of prior discrimination and present effects, but also proof that the present effects were caused by the prior discrimination and that the present effects were sufficient to justify the affirmative action program at issue.[51] The Fourth Circuit held that the University of Maryland was unable to establish these evidentiary links and thus rejected the University of Maryland's race-based scholarship program.

Second, in *Hopwood v. Texas*,[52] the Fifth Circuit Court of Appeals held unconstitutional the affirmative action admissions program at the University of Texas School of Law. The law school defended its affirmative action admissions program based in part on the need to remedy the present effects of past discrimination. Like the University of Maryland, the University of Texas School of Law had previously been *de jure* segregated, and the Texas university system was arguably still under a U.S. Department of Education, Office of Civil Rights mandate to desegregate.[53] However, the law school sought to justify its affirmative action admissions program based not only on its own discrimination but also on the prior discrimination perpetrated by Texas's primary and secondary school systems and by the University of Texas System as a whole.[54] The law school's reasoning was likely that it is merely a part of the overall system of education administered by the state of Texas, and by permitting affirmative action at the law school, the state was merely acting to remedy discrimination in one part of its education system that had discriminatory effects in another.[55] Alternatively, the law school's reasoning could perhaps be viewed as analogous to Justice O'Connor's statement in *Croson* that a state actor (in this case, the law school) should not be required to serve as a "passive participant" perpetuating a system of racial exclusion.[56] Regardless, the Fifth Circuit rejected these arguments, reading *Wygant* and *Croson* as requiring the University of Texas School of Law to justify its affirmative action admissions program based solely on its own prior

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[50] *See id.*

[51] *Id.* at 153-54 ("To have a present effect of past discrimination sufficient to justify the program, the party seeking to implement the program must, at a minimum, prove that the effect it proffers is caused by the past discrimination and that the effect is of sufficient magnitude to justify the program.")

[52] 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).

[53] *See* Letter from Dan Morales, Attorney General, State of Texas, to William P. Hobby, Chancellor, University of Houston System 25 (Feb. 5 1997) (describing the complex history of the Office of Civil Rights's relations with Texas's university system).

[54] *Hopwood*, 78 F.3d at 948.

[55] *Id.* at 953-54.

[56] *See Croson*, 488 U.S. at 491-492 (O'Connor, J., concurring).

discrimination.[57] Applying the standard established by the Fourth Circuit in *Podberesky*, the Fifth Circuit held that the law school had failed to do so: The court held that the present effects the law school identified, which were nearly identical to those identified by the University of Maryland in *Podberesky*, were not sufficiently linked to its own past discrimination and could not serve to justify the affirmative action admissions program at issue.[58]

The standard established in *Podberesky* and applied again in *Hopwood* expands on *Wygant* and *Croson* and has not yet been endorsed by the Supreme Court. If *Podberesky* and *Hopwood* become the law of the land, it is unclear how any university can provide sufficient evidence to support affirmative action to overcome the present effects of past discrimination.[59] Perhaps the only clearly established method to prove a link between past discrimination and present effects in the context of higher education admissions is by showing a policy or practice emanating from the de jure era that continues to have discriminatory effects, in which case the university is *required* to take remedial action under *United States v. Fordice*.[60] In this sense, *Podberesky* and *Hopwood* may mean that there are now only two classes of remedial affirmative action programs at universities in the Fourth and Fifth Circuits -- those that are required under *Fordice* and those that are not allowed under *Podberesky* or *Hopwood*.[61] This possibility puts great pressure on the diversity rationale for affirmative action in higher education.

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[57] *Id.* at 948-52. According to the court, "Even if, arguendo, the state is the proper government unit to scrutinize, the law school's admissions program would not withstand our review. For the admissions scheme to pass constitutional muster, the State of Texas, through its legislature, would have to find that past segregation has present effects; it would have to determine the magnitude of those present effects; and it would need to limit carefully the 'plus' given to applicants to remedy that harm." *Id.* at 951.

[58] *Id.* at 952-55. The "present effects" identified by the University of Texas School of Law included "[1] the law school's lingering reputation in the minority community, particularly with prospective students, as a 'white' school; [2] an underrepresentation of minorities in the student body; and [3] some perception that the law school is a hostile environment for minorities." *Id.* at 952 (*quoting* Hopwood v. Texas, 881 F. Supp. 551, 572 (W.D. Tex. 1994)).

[59] *See, e.g.*, Tanya Y. Murphy, *An Argument for Diversity Based Affirmative Action in Higher Education*, 95 Ann. Surv. Am. L. 515, ___ (1995) ("This strict standard of review and the seemingly impossible factual basis necessary to satisfy this heightened scrutiny imply that remedial action in higher education is no longer a valid justification for affirmative action.").

[60] *See supra* text at notes 29-32. Ironically, the Fifth Circuit in *Hopwood* may have inadvertently identified one such link when it suggested that the University of Texas School of Law could continue to grant a preference in admissions to candidates who are relatives of alumni. *See* Hopwood, 78 F.3d at 946. The law school has likely had an alumni preference policy since the time it was *de jure* segregated. Furthermore, because the law school was *de jure* segregated in the past, it obviously has a greater percentage of white alumni than minority alumni. Therefore, the alumni preference policy likely has a discriminatory effect. "Thus, if the law school adopted an admissions policy that employed only those factors that the court approved [in *Hopwood*], past racial discrimination by the law school itself would create a present disadvantage on the basis of alumni relations. By focusing on the use of racial classifications, the court overlooked this effect." Recent Case, *Hopwood v. Texas*, 110 Harv. L. Rev. 775, 780 (1997).

[61] This possibility does not necessarily sound the death knell for remedial affirmative action in higher education, at least not at prior *de jure* segregated institutions, because it can be argued that the Fifth Circuit in *Hopwood* did not

B. Non-remedial Interest in Realizing the Educational Benefits that Flow From Diversity

Unlike the remedial interest in overcoming the present effects of past discrimination, the non-remedial interest in promoting educational diversity seeks to justify affirmative action not as a remedy to make up for past discrimination against a certain group, but as a necessary tool to promote the educational development of all students for the future benefit of society as a whole. Leaders in higher education have long believed that diversity within a university's student body, including, more recently, racial diversity, is a vital tool for providing students with a complete educational experience.[62] The Supreme Court, too, has long recognized the value of educational diversity.[63]

In *Regents of the University of California v. Bakke*,[64] Justice Powell, in an opinion that came to be known as the opinion of the Court, held that securing the educational benefits that flow from diversity in higher education is a compelling interest that can constitutionally support race-based actions.[65] *Bakke* involved a challenge under the Fourteenth Amendment and Title VI to the affirmative action admissions program at the University of California at Davis Medical School. The Davis admissions program reserved each year sixteen places in its 100-student entering class for minority students. These sixteen places in the entering class were filled through a special admissions process operated in coordination with the regular admissions process. The Davis admissions program was challenged by Allan Bakke, a white male who

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apply the *Fordice* standard correctly or completely. For example, the court in *Hopwood* presumed that there was no way that the present underrepresentation of minorities at the University of Texas School of Law could be attributed to prior discrimination by the law school itself, as opposed to being attributed to prior discrimination by the state of Texas in its primary and secondary schools or its university system, which the court held the law school was not permitted to remedy through affirmative action. However, if the law school uses such variables as LSAT scores in its admissions decisions, which undoubtedly have a discriminatory effect on minority students, and if that practice dates back to the *de jure* segregated era, then that practice may be sufficient under *Fordice* to link the law school's prior discrimination to the present underrepresentation of minority students. Therefore, the law school would perhaps be required, or in this case, permitted, to eliminate that practice if consistent with "sound educational practices" or to "negat[e] as possible its segregative effects" through affirmative action. An analogous holding was made recently by the Fifth Circuit in Ayers v. Fordice, 95-60431 (5th Cir. Apr. 23, 1997), in which the court found that Mississippi's predominantly white universities could not continue to award scholarships based on minimum ACT cutoff scores because that practice dated back to the *de jure* segregated era and continued to have discriminatory effects. The court recognized that the use of ACT scores to award scholarships may be perfectly appropriate outside of Mississippi, but it cannot, given the Supreme Court's holding in *Fordice*, continue in Mississippi nonetheless.

[62] *See, e.g.*, Neil Rudenstine, President, Harvard University, Report to the Harvard University Board of Overseers, 1993-1995, 1 (Jan. 1996) ("[S]tudent diversity has, for more than a century, been valued for its capacity to contribute powerfully to the process of learning and to the creation of an effective educational environment. It has also been seen as vital to the education of citizens -- and the development of leaders -- in heterogeneous democratic societies such as our own.").

[63] *See* Sweatt v. Painter, 339 U.S. 629 (1950) (recognizing, ironically, the value of student diversity at the University of Texas Law School).

[64] 438 U.S. 265 (1978).

[65] *See id.* at 312-15 (opinion of Powell, J.).

was rejected from Davis Medical School two consecutive years under the regular admissions process despite having grades and test scores substantially above the average of those students admitted under the special admissions program.[66]

In a fractured opinion, four justices in *Bakke* held that Title VI was coextensive with the Fourteenth Amendment and that the Davis admissions program was constitutional in all respects;[67] four different justices held that the case was governed exclusively by Title VI, that Title VI prohibited all considerations of race in the administration of programs receiving federal funds, and that the Davis admissions program was therefore unlawful.[68] Announcing the judgment of the Court, Justice Powell as the swing vote, joined the former four justices in holding that the Fourteenth Amendment and Title VI were coextensive and that the medical school was not fully prohibited from considering race in its admissions process. However, Justice Powell joined the latter four justices in declaring the Davis admissions program unconstitutional because it was not narrowly tailored to promote its sole compelling interest, as Justice Powell saw it, of promoting educational diversity.[69]

According to Justice Powell, the Davis Medical School's interest in promoting educational diversity was sufficiently compelling to support affirmative action in student admissions.[70] "The atmosphere of 'speculation, experiment and creation' -- so essential to the quality of higher education -- is," he wrote, "widely believed to be promoted by a diverse student body."[71] Justice Powell found the medical school's interest in educational diversity to be supported not just by leaders in higher education, but by the First Amendment interest in academic freedom, which protects the authority of universities to make their own educational judgments concerning "who may teach, what may be taught, how it shall be taught, and who may be admitted to study."[72]

However, according to Justice Powell, the type of educational diversity that constituted a compelling interest was not pluralistic diversity of certain racial groups, but more individualistic diversity in which race is "but a single though important element."[73] "Ethnic diversity. . . is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student

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[66] *See id.* at 272-78.
[67] *See id.* at 324-79 (Brennan, J., concurring in part and dissenting in part, joined by White, Marshall, & Blackmun, JJ.).
[68] *See id.* at 408-21 (Stevens, J., concurring in part and dissenting in part, joined by Burger, C.J., and Rehnquist & Stewart, JJ.).
[69] *See id.* at 271-72 (opinion of Powell, J.).
[70] *Id.* at 311-12.
[71] *Id* at 312.
[72] *Id.* at 312-13 (*quoting* Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring in the result)).
[73] *Id.* at 315.

body."[74] Therefore, a narrowly tailored affirmative action program designed to promote educational diversity would not rely on rigid racial quotas or separate admissions processes, but would treat race as only a single "plus" factor in its regular admissions process.[75]

As a result of Justice Powell's opinion in *Bakke*, public and private universities across the country have for the last two decades adopted this diversity rationale as their primary justification for affirmative action programs in student admissions.[76] However, given the fractured holding of the Court in *Bakke* and the absence of additional guidance from the Court, the status of Bakkean diversity has remained in some doubt.[77]

Twelve years after *Bakke*, in *Metro Broadcasting, Inc. v. FCC*,[78] the Court dramatically expanded the scope of the diversity rationale by applying it outside the formal education context. In *Metro*, the Court upheld under a Fifth Amendment challenge two minority preference policies adopted by the Federal Communications Commission (FCC), as authorized by Congress, which sought to increase minority ownership of radio and television stations in order to increase broadcast diversity. Central to the Court's holding was its conclusion that because these were federal affirmative action programs authorized by Congress, which was owed special deference by the Court as a co-equal branch with special powers under Section 5 of the Fourteenth Amendment, they were subject only to intermediate scrutiny.[79] The Court held that "the interest in enhancing broadcast diversity is, at very least, an important governmental objective and is therefore a sufficient basis for the Commission's minority ownership policies."[80] In reaching this

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[74] *Id.* at 314.

[75] *See id.* at 316-18.

[76] *See, e.g.*, Murphy, *supra* note 59, at __.

[77] Prior to *Hopwood v. Texas*, discussed *infra* at text accompanying notes 87-100, the only federal case to address *Bakke's* diversity rationale in the higher education context was *Davis v. Halpern*, 768 F. Supp. 968 (E.D.N.Y. 1991). *Davis* involved a challenge by a white male plaintiff to the affirmative action admissions program at the City University of New York Law School at Queens College. *Id.* at 970. Ruling on defendant's motion for summary judgment, the federal district court held, based on *Bakke*, that educational diversity was a compelling interest that could constitutionally support race-based affirmative action. *Id.* at 975. However, the court nonetheless refused to grant summary judgment to the university because evidence indicated that its affirmative action admissions program was intended not only to promote diversity, but to achieve other "impermissible" ends that fell under the rubric of overcoming the effects of general societal discrimination. *Id.* at 980-83. Thus, *Davis* stands for the important proposition that a university that seeks through student admissions to promote both educational diversity and remedial interests will be forced to justify its program under both standards. *See* Gabriel J. Chin, *Bakke to the Wall: The Crisis of Bakkean Diversity*, 4 Wm. & Mary Bill Rts. J. 881, 905-06 (1996).

[78] 497 U.S. 547 (1990), *overruled, in part, by* Adarand v. Pena, 115 S. Ct. 2097 (1995).

[79] *See Metro*, 497 U.S. at 563-65 ("We hold that benign race-conscious measures mandated by Congress -- even if those measures are not 'remedial' in the sense of being designed to compensate victims of past governmental or societal discrimination -- are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives.").

[80] *Id.* at 567-68.

holding, the Court gave great weight to the host of evidence, including empirical evidence, linking the promotion of minority owners in the broadcast industry to an increase in broadcast diversity.[81]

However, in a vigorous dissent, Justice O'Connor, joined by Chief Justice Rehnquist and Justices Scalia and Kennedy, strongly objected to the application of intermediate rather than strict scrutiny to the FCC's affirmative action programs.[82] Furthermore, Justice O'Connor argued that the interest in promoting broadcast diversity was not sufficiently compelling to justify race-based affirmative action, and, although *Bakke's* educational diversity was never expressly mentioned in the dissent, Justice O'Connor suggested repeatedly that only the remedial interest in overcoming the present effects of past discrimination could ever be considered so compelling.[83]

Finally, just five years later in *Adarand Constructors, Inc. v. Pena*,[84] Justice O'Connor, this time writing for the Court, held that *all* race-based affirmative action programs, whether adopted by a federal, state, or local government actor, were subject to strict scrutiny, and overruled *Metro* on this point. *Adarand* involved a challenge to "the Federal Government's practice of giving general contractors on government projects a financial incentive to hire 'socially and economically disadvantaged individuals,' and in particular the Government's use of race-based presumptions in identifying such individuals."[85] The Court did not reach the merits, but remanded for reconsideration under the strict scrutiny standard.

This constitutes the present state of the Supreme Court's jurisprudence concerning race-based affirmative action programs. The implications of *Adarand* for the diversity rationale are troubling, but uncertain at best. *Adarand* overruled *Metro*, but only on the standard to be applied in evaluating federal affirmative action programs, and not on the merits. Furthermore, *Adarand* made no reference to *Bakke* as far as educational diversity is concerned. Most importantly, perhaps, there are several key distinctions between the broadcast diversity at issue in *Metro* and the educational diversity endorsed in *Bakke*, including the unique role of education in society, the special First Amendment protections of academic freedom operating in the higher education context, the emphasis placed on individualistic diversity in *Bakke* versus the largely pluralistic diversity at issue in *Metro*, the direct interactions among students in a university

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[81] *Id.* at 580-83. *But see id.* at 602 (O'Connor, J., dissenting) ("Social scientists may debate how peoples' thoughts and behaviors reflect their background, but the Constitution provides that the Government may not allocate benefits and burdens among individuals based on the assumption that race or ethnicity determines how they act or think.")

[82] *Id.* at 603-10 (O'Connor, J., dissenting).

[83] *E.g., id.* at 612 ("Modern equal protection doctrine has recognized only one [compelling] interest: remedying the effects of racial discrimination.").

[84] 115 S. Ct. 2097 (1995).

[85] *Id.* at 2101.

environment versus the attenuated interactions between owners of broadcast stations and the public, and the fact that Justice Powell upheld educational diversity under strict scrutiny in *Bakke*.[86]

Nonetheless, the Fifth Circuit in *Hopwood v. Texas*[87] implicitly recognized that the dissenters in *Metro* had become the majority in *Adarand*. In a burst of judicial activism, "tenuously stringing together pieces and shards of recent Supreme Court opinions,"[88] a divided court in *Hopwood* rejected educational diversity as a compelling interest that can constitutionally justify affirmative action in higher education.

III. *Hopwood v. Texas* and Its Rejection of the Diversity Rationale

In *Hopwood v. Texas*, as discussed above, the Fifth Circuit held unconstitutional the affirmative action admissions program at the University of Texas School of Law. The law school's admissions system was largely a bifurcated system in which African- and Mexican-American applicants were evaluated separately from other applicants based on reduced admissions standards.[89] The law school defended its affirmative action admissions program based in part on *Bakke's* diversity rationale. It was clear that the law school's admissions program did not meet the narrowly tailored requirements laid out in *Bakke*; rather than promoting individualistic diversity in which race was "a single though important element," the law school was basically administering a separate admissions process for minority students. Nonetheless, a majority of the court eschewed this more narrow ground for holding the law school's admissions program unconstitutional and set out, in effect, to "overrule" *Bakke* by rejecting educational diversity as a compelling interest.[90]

The Fifth Circuit's rejection of the diversity rationale in *Hopwood* proceeded in three stages: First, the court held that Justice Powell's decision in *Bakke* had never been the law and, therefore, was not binding precedent. According to the Fifth Circuit, "Justice Powell's argument in *Bakke* garnered only his vote and has never represented the view of the majority of the Court in *Bakke* or any other case."[91] Second, the court held that recent Supreme Court precedent indicated that the only potentially compelling interest was overcoming the present effects of past discrimination and that educational diversity was,

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[86] *See, e.g.*, Akhil Reed Amar & Neal Kuma Katyal, *Bakke's Fate*, 43 UCLA L. Rev. 1745, 1747 (1996) (offering several potentially salient distinctions between *Bakke* and *Metro*).

[87] 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).

[88] Hopwood v. Texas ("Hopwood II"), 84 F.3d 720, 722 (5th Cir. 1996) (Politz, J., dissenting from denial of rehearing en banc).

[89] *See Hopwood*, 78 F.3d at 934-38 (explaining the University of Texas School of Law's admissions process).

[90] *Hopwood II*, 84 F.3d at 722 (Politz, J., dissenting from denial of rehearing en banc) ("The majority of the panel [in *Hopwood*] overruled *Bakke*, wrote far too broadly, and spoke a plethora of unfortunate dicta.").

[91] *Id.* at 944.

therefore, not compelling.[92] The Fifth Circuit even suggested that this conclusion constituted binding precedent on the court, saying, "[W]e see the case law as sufficiently established that the use of ethnic diversity simply to achieve racial heterogeneity, even as part of the consideration of a number of factors, is unconstitutional. Were we to decide otherwise, we would contravene precedent that we are not authorized to challenge."[93] Third, the court held that race is as irrelevant to university admissions as blood type, that the use of race in university admissions improperly stereotypes minority applicants, and that the use of race fuels racial hostility.[94]

The Fifth Circuit concluded, "In sum, the use of race to achieve a diverse student body, whether as a proxy for permissible characteristics, simply cannot be a state interest compelling enough to meet the steep standard of strict scrutiny."[95] While *Hopwood* applies only in the Fifth Circuit, which includes Texas, Mississippi, and Louisiana, *Hopwood* sets a dangerous precedent with potentially broad scope and effects. According to Dan Morales, Texas's Attorney General, "*Hopwood's* restrictions would generally apply to all internal institutional policies [at both public and private universities], including admissions, financial aid, scholarships, fellowships, recruitment, and retention, among others."[96] Furthermore, since *Hopwood*, several cases have been filed challenging affirmative action in higher education.[97]

The Fifth Circuit's rejection in *Hopwood* of educational diversity as a compelling interest in the higher education context can be criticized on numerous grounds that are beyond the scope of this paper.

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[92] *Id.* at 944-45 ("[R]ecent Supreme Court precedent shows that the diversity interest will not satisfy strict scrutiny. Foremost, the Court appears to have decided that there is essentially only one compelling interest to justify racial classifications: remedying past wrongs.").

[93] *Id.* at 945-46.

[94] *Id.*

[95] *Id.* at 948.

[96] Letter from Dan Morales, *supra* note 53, at 22. Morales has been "bitterly criticized" for his narrow reading of what is permitted under *Hopwood*. Peter Applebome, *Universities Report Less Minority Interest After Action to Ban Preferences*, N.Y. Times, Mar. 19, 1997, at A24.

[97] A federal district court in Texas recently rejected the claim of an unsuccessful white applicant alleging race-based discrimination in admissions at the University of Texas College of Education. The court found no evidence that race was a motivating factor in the admissions process at the point at which the plaintiff was rejected. *See* Lesage v. Texas, No. A-96-CA-286 JN (W.D. Tex. March 7, 1997) (refusing to reach the issue of whether the University's use of race at a later stage in the admissions process would be constitutional). Furthermore, two recent suits have been filed in Georgia and Washington challenging affirmative action programs in higher education on grounds similar to those invoked in *Hopwood*. *See* Patrick Healy, *A Lawsuit Against Georgia University System Attacks a Range of Race-Based Policies*, Chron. of Higher Ed., March 14, 1990, at A25; Douglas Lederman, *Suit Challenges Affirmative Action at U. of Wash.*, Chron. of Higher Ed., March 14, 1997, at A27. The Washington case is being pursued by the same group that instigated the action against the University of Texas School of Law in *Hopwood*. Finally, the Supreme Court is presently considering whether to grant *certiorari* on a Title VII case challenging a school board's decision to lay off a white high school teacher rather than an equally qualified black teacher in order to maintain educational diversity in the faculty. *See* Taxman v. Board of Education of the Township of Piscataway, 91 F.3d 1547 (3d Cir. 1996) (holding that such non-remedial affirmative action is prohibited under Title VII).

However, the most important point to note here is that *Hopwood* is not the end of the story. In *Wittmer v. Peters*,[98] Chief Judge Posner offers a vastly different and ultimately persuasive view of the present state of non-remedial affirmative action programs under the Supreme Court's jurisprudence.

IV. The Countervailing Case of *Wittmer v. Peters*

In *Wittmer v. Peters*, the Seventh Circuit upheld an affirmative action employment program for correctional officers at a "boot camp" for youth offenders. The affirmative action program was intended to promote qualified black correctional officers to vacant lieutenant positions in order to facilitate the penological goals of the boot camp.[99] The boot camp's security staff was less than 6 percent black with no black supervisors; the inmate population was approximately 70 percent black. The defendant state official, warden of the youth detention center, presented expert evidence that the boot camp program was not likely to be as successful without some black officers in supervisory positions. The plaintiffs, three white correctional officers who had applied unsuccessfully for a lieutenant position, challenged the affirmative action program under the Fourteenth Amendment.

Chief Judge Posner, writing for a unanimous court, upheld the affirmative action employment program, finding it narrowly tailored to serve a compelling interest.[100] First, the court rejected the plaintiffs' contention, embraced by the Fifth Circuit in *Hopwood*, that recent Supreme Court precedent indicated that only the remedial interest in overcoming the present effects of past discrimination could ever justify race-based affirmative action:

> The plaintiffs argue that the only form of racial discrimination that can survive strict scrutiny is discrimination designed to cure the ill effects of past discrimination by the public institution that is asking to be allowed to try this dangerous cure. There is dicta to this effect. And certainly it is the most frequently mentioned example of a case in which discrimination is permissible. But there is a reason that dicta are dicta and not holdings, that is, are not authoritative. A judge would be unreasonable to conclude that no other consideration except a history of discrimination could ever warrant a discriminatory measure unless every other consideration had been presented to and rejected by him. The dicta on which the plaintiffs rely were uttered in cases that did not involve, by judges who had never had cases that involved, the racial composition of a prison staff. Such cases were not, at least insofar as one can glean from the opinions, present to the minds of the judges when they considered and rejected other grounds for discrimination and expressed that rejection in

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[98] 87 F.3d 916 (7th Cir. 1996), *cert. denied*, 65 USLW 3416 (1997).

[99] *See id.* at 917. "The idea [of the boot camp] is to give inmates an experience similar to that of old-fashioned military basic training, in which harsh regimentation, including drill-sergeant abuse by correctional officers, is used to break down and remold the character of the trainee." *Id.*

[100] *See id.* at 918-19.

> sweeping dicta that we have mentioned. The weight of judicial language depends on context, by these plaintiffs ignored. . . . [T]he rectification of past discrimination is not the only setting in which government officials can lawfully take race into account.[101]

Second, the court implicitly held that the state's interest in "pacification and reformation" of youth offenders was sufficiently compelling to justify affirmative action.[102] The court's reasoning here was somewhat unclear. However, two factors were clearly central to the court's holding on this point: (1) The court noted that a majority of the Supreme Court had recently endorsed the idea that strict scrutiny is not inevitably "fatal in fact."[103] (2) The court placed great weight on the fact that the defense presented sufficient expert evidence of the penological necessity of the affirmative action program. On this second point, the court said:

> It is not enough to say that of course there should be some correspondence between the racial composition of a prison's population and the racial composition of the staff; common sense is not enough; common sense undergirded the pernicious discrimination against blacks now universally regretted. . . . In any event that is not the justification advanced. The black lieutenant is needed because the black inmates are believed unlikely to play the correctional game of brutal drill sergeant and brutalized recruit unless there are some blacks in authority in the camp. This is not just speculation, but is backed up by expert evidence that the plaintiffs did not rebut. The defendants' experts -- recognized experts in the field of prison administration -- did not rely on generalities about racial balance or diversity; did not for that matter, defend a global racial balance. They opined that the boot camp in Greene County would not succeed in its mission of pacification and reformation with as white at staff as it would have had if a black male had not been appointed to one of the lieutenant slots.[104]

What does *Wittmer* tell us about *Hopwood*? *Wittmer* and *Hopwood* obviously evaluate different non-remedial interests and different programs designed to achieve those interests. Nonetheless, *Wittmer* establishes, at least in the Seventh Circuit, that non-remedial interests in general can be sufficiently compelling to justify affirmative action. Furthermore, while *Wittmer* says nothing about whether

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[101] *Id.* at 919 (*criticizing* Hopwood v. Texas, 78 F.3d 932, 944 (5th Cir. 1996)) (other citations omitted).
[102] *See id.* at 920.
[103] *Id.* at 918. *See also Adarand*, 115 S. Ct. at 2117; *id.* at 2136 (Ginsburg, J., dissenting, joined by Breyer, J.).
[104] *Id.* at 919-20. Of potentially great relevance to making the case for educational diversity as a compelling interest, the court, in deciding how much and what type of evidence was necessary to justify the affirmative action program at issue, expressly recognized that the amount and type of evidence required was dependent upon the amount and type of evidence available. *Id.* at 920. The court did suggest that "after correctional boot camps have been around long enough to enable thorough academic (or academic-quality) study of the racial problems involved in their administration, prison officials can[not] continue to coast on expert evidence that extrapolates to boot camps from the experts' research on conventional prisons." *Id.* at 920-21. However, the court also recognized that boot camps have been in existence since *1983*, and it still upheld the affirmative action program at issue based on limited direct evidence. *Id.* at 921

educational diversity constitutes such a compelling interest, it would be somewhat ironic if the interest in rehabilitating youth offenders was sufficiently compelling to justify affirmative action, but the interest in promoting the educational and socio-moral development of university students was not so compelling. Correctional facilities may be unique institutions, but so are universities.

V. Conclusion

This brief legal overview indicates that the Supreme Court will uphold affirmative action only where there is a strong basis in evidence to support the belief that the given program serves a compelling interest and is necessary to achieve that interest.[105] In *Hopwood v. Texas*,[106] the Fifth Circuit held that a university's interest in promoting educational diversity (as well as any non-remedial interest) is not sufficiently compelling to justify affirmative action. *Wittmer v. Peters*[107] lays the foundation for a potentially powerful rebuttal to that conclusion. Ultimately, the Supreme Court will decide which conception is correct. The higher education community must, therefore, use this time to develop its case for diversity.

[105] *See, e.g.*, Adarand v. Pena, 115 S. Ct. 2097, 2113 (1995).
[106] 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).
[107] 87 F.3d 916 (7th Cir. 1996), *cert. denied*, 65 USLW 3416 (1997).

December 24, 1997

Theda,

Attached are drafts of the two papers prepared by Mathtech on diversity in higher education. Unfortunately, both Dan Morrissey and I will be on leave until January 5, 1998. I think Alan will be around--he doesn't believe in vacation--and Dan and I will be happy to discuss next steps when we return next year.

Hope you have a great holidays and new year.

Dan Goldenberg

Attachment

cc: Alan Ginsburg
Dan Morrissey

Bill —

Generally, the 1st paper is much too general, and relies much too heavily on anecdotal statements by university Presidents. It is just skimming the surface. The 2nd is more clear, but less important or controversial.

Mike

DIVERSITY IN HIGHER EDUCATION: WHY ARE WE INTERESTED AND WHAT DOES IT MEAN?

and

INSTITUTIONS' PURSUIT OF DIVERSITY IN HIGHER EDUCATION— SUCCESS STORIES

U.S. Department of Education
Planning and Evaluation Service

DIVERSITY IN HIGHER EDUCATION
WHY ARE WE INTERESTED AND WHAT DOES IT MEAN?

DIVERSITY IN HIGHER EDUCATION
WHY ARE WE INTERESTED AND WHAT DOES IT MEAN?

The Value of Diversity

The value of diversity is anchored in principled convictions about equality, opportunity and fairness and the growing realities of domestic demographic change and a global economy. These values are reflected at three different levels of importance to higher education.

At the broadest level, diversity is increasingly important in our national domestic society and to our economic well-being. This is particularly clear in our demographic change, the changing needs of our economy and the vision of our business leaders.

Between 1995 and the middle of the next century, the middle series Census projections show approximately five fold increases in the total number of Hispanic origin and Asian/Pacific Islander residents in our population, a doubling of the black and American Indian/Eskimo & Aleut residents, and a much more modest increase in the total number of non-Hispanic white residents. In a brief generation and one half, these changes in total numbers will bring about a sharp redistribution of the racial and ethnic make-up of the society. Residents of Hispanic origin will rise from about 10 to almost 25 percent of the total, Asian/Pacific Islanders will more than double their share, while the non-Hispanic white population share will drop by more than 20 percent, as shown in Table 1.

Table 1: Resident Population, by Race: 1995 and Projections for 2010, 2030, 2050 [Percent Distribution]

Year	White, Non-Hispanic	Black, Non-Hispanic	Hispanic	American Indian, Eskimo Aleut, Non-Hispanic	Asian, Pacific Islander, Non-Hispanic
1995	73.6	12.0	10.2	.7	3.5
2010	68.0	12.6	13.8	.8	4.8
2030	60.5	13.1	18.9	.8	6.6
2050	52.8	13.6	24.5	.9	8.2

Source: Statistical Abstract of the United State 1996. Table No.19.

While these demographic changes will not be evenly distributed across the country, the impact of different cultural heritage and interests will be significant on some areas and generally felt everywhere. And that impact will be extended to our domestic economic life in both consumer demand and the make-up of the workforce. These changes are overlaid by two other important trends which reinforce both the challenge the nation faces and the value of diversity. The first of these trends is the need for a better educated and trained workforce as the impact of new technology and the competitiveness of the global market escalate the level of quality required of American workers.

The recognition by the young population and their parents of the increasing demands of the labor market can be seen in the trends in college enrollment in recent years. Table 2 shows the trends in college enrollment rates of high school graduates, by race/ethnicity over time. These data represent college enrollment rates for individuals age 18 to 24 who graduated from high school during the preceding 12 months. It includes both two-year and four-year institutions, and both part-time and full-time students. As shown, while whites and blacks have both increased their college participation rates significantly from 1980 through 1995, participation rates for Hispanic students have stayed about the same over time. The gaps in participation rates between whites and blacks, and especially between whites and Hispanics, increased over this time period.

What if calculated for Blacks attending colleges that are <80% Black?

Table 2: College Enrollment Rates of High School Graduates
[Percent Distribution]

Year	Total	White, Non-Hispanic	Black, Non-Hispanic	Hispanic
1980	49.3	49.9	41.8	52.7
1985	57.7	59.4	42.3	51.1
1990	59.9	61.5	46.3	47.3
1995	61.9	62.6	51.4	53.8

Source: National Center for Education Statistics, 1996 Digest of Education Statistics

The second overlapping trend is the rapidly increasing globalization of the economy motivating employers to have a strong interest in a corporate culture and a workforce that understands and reflects diversity. National data are not organized to separate easily the corporate organizations and their workforces which are engaged in international commerce and increasingly diverse domestic markets from others. But the leadership of such companies is increasingly aware and vocal about their diversity needs.

Some state their sense of the value of diversity quite directly. John A. Krol, DuPont's president and CEO says: "We have proof diversity improves our business performance." And Valerie M. Crane, Bank of America's executive vice president states: "Bank of America treats diversity as a business initiative. It is a business imperative for us." Krol adds: "We are all comfortable listening to people who think like us. And we are uncomfortable at first with people who are not like us and challenge us, but that is what adds value." (The Conference Board, 1997) Pitney Bowes CEO Michael J. Critelli stated: "It is a business necessity. The ultimate question is, how do we value it and optimize the attributes for competitive advantage? Any company that wants to be successful will have to do it." (Business Week, December 9,1996)

Other business leaders perceive and express their thinking in different contexts. In General Electric's 1994 annual report, CEO Jack Welch urged a company with " boundaryless" behavior. "Boundaryless behavior is the soul of today's GE. Simply put, people seem compelled to build layers and walls between themselves and others, and that human tendency tends to be magnified in large, old institutions like ours. These walls cramp people, inhibit creativity, waste time, restrict vision, smother dreams, and above all, slow things down." (Business Week, December 9, 1996).

Some, like Pamela North of Lucent Technologies, see it in training terms: "Leaders, particularly executive leadership, have the least training today on the issues confronting diverse teams and workforces abroad.... If our organization has to put its time and money in any one direction, it is around executive development leadership to face the challenges of globalization." (The Conference Board, 1997) Others, like United Technologies Corporation, understand the effort and persistence required: "It is important to develop a strategy that is well balanced.

Everything that is required for culture change cannot be accomplished in one or two years. It requires both a short-term, and more importantly, a long-term commitment...." And some, like Price Waterhouse, express it in their marketing and recruiting: "... Our clients depend on us to look at their complex business problems from every possible angle. So it's no wonder we consider diversity crucial to our success, especially in the global marketplace of the 21st century." (Business Week, December 9, 1997)

These statements are but a small sample of business conviction on the subject of diversity, and help to demonstrate the important trend toward a global economy and the associated need for diversity. An American Management Association survey in 1995 estimated that half of all U.S. employers had some kind of formal initiative to manage diversity. Thus, the two trends of globalization and the domestic demographic change provide strong undergirding for the increasing value of diversity in the society as a whole. It is well to keep in mind that these growing trends are built upon an older tradition in the United States of central importance since World War II and imbedded in yet older national precepts of seeking to provide equality of opportunity for all residents in America.

Leap too big.

Turning from the value as seen in the society at large, diversity is increasingly important to higher education institutions. The growing importance at the higher education institution level can also be seen from institutional traditions, demographic data projections and the statements of higher education leaders and other reactions from outside the higher education institutions.

Higher education has a long tradition of putting a premium on open inquiry, which carries with it clear implications for valuing diversity. The demographic projections underscore that traditional conviction. If one takes the population projections for the age ranges of most interest to colleges and universities (youth and young adults, notwithstanding the growing demand for life-long learning), the changes in both the numbers and distribution of the prime college age population are even more stark than for the population as a whole.

Is this a clear connxn?

This needs to more clearly state the point.

Using again the middle series Census projections, Table 3 compares the prime college age population of 18-24 year olds between now (1995) and the year 2025 and the age grouping

which will subsequently feed higher education institutions (0-17 year olds). As is evident, the percent of non-Hispanic whites declines sharply, and even the absolute number declines; while the Hispanic and the Asian and Pacific Islander groups grow in the range of 100 percent or more, and other minorities increase by 30 percent. Interest in diversity will become an increasing financial necessity as well as a matter of conviction.

Table 3: Resident Population, by Race: 1995 and Projection for 2025 [in thousands] (percent of total in parentheses)

	0-17 Year Olds		18-24 Year Olds	
	1995	2025	1995	2025
Total	68,740	80,783	24,932	30,372
White, Non-Hispanic	45,679 (66.5)	42,528 (52.6)	16,993 (68.2)	16,785 (55.3)
Black, Non-Hispanic	10,173 (14.8)	12,741 (15.8)	3,549 (14.2)	4,609 (15.2)
Hispanic	9,674 (14.1)	19,085 (23.6)	3,239 (13.0)	6,560 (21.6)
American Indian, Eskimo, Aleut, Non-Hispanic	674 (1.0)	856 (1.1)	221 (1.0)	304 (1.0)
Asian/Pacific Islander, Non-Hispanic	2,543 (3.7)	5,573 (6.9)	931 (3.7)	2,114 (7.1)

Source: Statistical Abstract of the United States 1996. Table No. 22&24.

but this is about diversity of pts. viewpoint not race, ethnicity etc. ?

Higher educational leadership is no less clear than corporate leadership about the value of diversity. In a November 18, 1997 faculty convocation address, President Leo J. O'Donovan of Georgetown University stated: "No education is a success if it invites you to interact only with those who think as you do. The great virtue of education is not that it teaches us mere knowledge but that it teaches us to learn and understand." "One of the best arguments for diversity is that the most powerful learning takes place when students' viewpoints are challenged, and that's what's happening to us," echoes Richard H, Hersh, president of Hobart and William Smith Colleges. (Leaderman, May 23, 1997)

This leadership identifies many aspects of the benefits of diversity from a higher education perspective. "Surely any university that wishes to claim a capacity to train leaders for

Is this a Proof statement?

this evolving world will want to educate students who come from many groups and backgrounds," said William G. Bowen, president of the Andrew W. Mellon foundation and former president of Princeton University (Bowen, 1995). "It is increasingly clear that recruiting and retaining greater numbers of ethnic minority students, faculty, and staff are not only legal requirements and political advantages; they are also critical measures of the quality of our educational environments," say Mary K. Rouse and Roger Howard, Dean and Associate Dean of Students at the University of Wisconsin—Madison. (Rouse, No date) In an institutional website, President William E. Kirwan of the University of Maryland states: "At College Park, our efforts to build excellence are inextricably linked to our efforts to increase diversity.... College Park must be a place where diversity is not only tolerated, but celebrated." (available: http://www.inform.umd.edu/ Diversityweb/Profiles/divdbase/umd.html)

Buttressing the clear importance of diversity in their minds, both educational and corporate leaders recognize that the achievement of diversity falls short of its desired goals and faces challenges. A recent RAND study interviewing 350 academic and corporate leaders in four major metropolitan areas reflected such shortfalls in the views of the corporate community interviewed. (RAND) These executives believed that educators were missing opportunities to connect to diversity within the community and internships or work-study experiences in international organizations. They felt that they could not rely on U.S. colleges and universities to provide them with workers who had the necessary skills for the global marketplace. And with respect to challenges, Bowen in the same talk cited above said: "From the standpoint of public policy, my main concern is that the political currents of the day will endanger hard-won gains in broadening both choice and access for students from all but the wealthiest families. Only at our peril will we allow higher education to be resegregated along economic lines—or along racial lines, which is at least as great a danger."

The third level at which the value of diversity is realized is, of course, at the level of the individual student. The source of its growing importance flows from the trends and development described above in the changing demands for the workforce and the development of readiness for life in a more diverse society. Individual development involves far more than knowledge and

skills to include one's attitude, expectations and world view. For the student, a successful experience with diversity in higher education includes a sharing of common societal aspirations and a well-developed appreciation of cultural differences. It is also likely to include enhancement of civic participation.

Students now and likely into the foreseeable future begin their higher education with a wide range of experiences related to diversity—some quite sophisticated and many much more limited. Higher education is an ideal time to reform or refine one's knowledge and perspective about the increasingly diverse world in which we will all live.

The Meaning of Diversity

The preceding discussion of the values seen in diversity make clear that diversity in higher education can be appropriately understood only by taking account of its meaning and impact for both students and institutions. As a recent literature review pointed out: "Institutions of higher education cannot deal with diversity issues merely by providing services to remedy student deficit. Instead, the institution must change to more adequately address educational issues and organize for a more diverse future." (Appel, et al, 1996)

Diversity in higher education also must be seen comprehensively. The concept of diversity extends to far more than access and admissions, important as those matters are as starting points in higher education diversity. It includes campus life and a wide range of relationships among students, faculty, staff and others such as guest speakers, alumni, and external mentors. As the synopsis of a literature notes: "The research literature in all its complexity tends to suggest that comprehensive institutional change addressing both campus climate and the curriculum is the right strategy for both minority and majority students." (Appel, et al,1996) As researcher Alexander Astin has pointed out, assessment of diversity in higher education should include: student characteristics at entry (inputs), institutional characteristics and student experiences while in higher education (environment), and student characteristics at exit (outcomes) (dubbed I--E--O by Astin, 1991).

As we develop in a companion paper—*Successful Institutional Diversity Strategies*, the major components of diversity in higher education fall into four major categories. The first of these is access, or the processes by which diversity in the student body is achieved. Diversity in its broadest sense encompasses potentially a wide range of differences—parental backgrounds, religion, home communities, income, gender, life experiences as well as race and ethnicity. While all are real, this paper concentrates on ethnicity and race, particularly since it, along with gender, have previously been the basis of officially sanctioned discriminatory behavior that limited equal opportunity. With respect to access, it is well to remember that access goes beyond a formal admissions process to include a wide variety of outreach activities through which individuals are motivated and assisted in seeking higher education opportunities.

A second major component of diversity in higher education is persistence, or helping students stay in college. About one half of all students entering 2- and 4-year higher education institution express an intention to gain a bachelor's degree. (U.S. Department of Education, 1997) Calculation of success is complex and difficult because of transfers and temporary drop-outs; however, the losses are substantial, and differentially larger for minorities. Thus, the pursuit of diversity appropriately includes a dimension of persistence. Helping students stay in college moves simultaneously in two different directions. One element, often referred to as campus life, includes activities directed at making students welcome and a part of campus life, participation in civic activities, a variety of personal support services, and direct efforts to deal with inter-group tensions. A second parallel element, often under the heading of academic support, is directed at a variety of special assistance and tutoring to help individual or groups of students cope with what may be a new set of educational demands and requirements.

A third component of diversity in higher education is its impact on teaching and learning which has implications for institutions, their faculty and students alike. Harvard's President Neil L. Rudenstine states: "Students benefit in countless ways from the opportunity to live and learn among peers whose perspectives and experiences differ from their own. A diverse educational environment challenges them to explore ideas and arguments at a deeper level -- to see issues from various sides, to rethink their own premises, to achieve the kind of understanding that comes only from testing their own hypotheses against those of people with other views."

But don't we have some evidence that minority students w/ higher h.s. grades and SAT scores also have higher drop-out rates?

(Rudenstine, 1996) And William G. Bowen notes: "...my point is that enrolling a diverse class has potentially large educational benefits which spill over to many if not all students -- and that these benefits are widely appreciated." (Bowen, 1995) The implications for teaching and learning go not only to the interactions among students and faculty, but also to the content and structure of the curriculum and pedagogy. elaborate (?) what exactly do you mean ?)

The final component of higher education diversity is the linkages to what come next for graduating students, namely employment. This dimension of diversity is among the newest, and often goes beyond the constructs of most research about and definitions of diversity. It is nonetheless increasingly a matter of concern and focus, and therefore included in this definition of the meaning of diversity in higher education. As noted in the opening section, employers are interested in new employees prepared for diversity, and at least some of those employers are critical of higher education in preparing such a workforce.

but do we have any data on this ?

Before departing from the discussion of the meaning of diversity in higher education, it is important to point out two companion concepts which arise continuously in the literature and other discussions of diversity. The first important companion concept is motivation, which arises constantly in connection with effective performance and achievement by students in higher education. Motivation is a regular component of efforts to improve access and persistence in the pursuit of diversity. The second important companion concept is quality. To some minds, diversity and quality are conflicting concepts. In the research and in the advocacy concerning diversity, diversity and quality are complementary and twin goals to be pursued together.

so what ?

The Extent and Benefits of Diversity

when did we explore that ?

Having explored the principled convictions and emerging realities that underlie the values seen in diversity and the comprehensive meaning of the term as it relates to higher education, we now turn to the information and knowledge which is available to describe its extent and its benefits. Diversity is a relatively new field of research and information gathering where national and systematic data are just beginning to catch up with our values and practice. Thus, as a recent literature review noted: "...while there is considerable literature that might be called principles of

good practice, there is much less available that directly assesses the impact of these initiatives on the institution and even less that assesses the impact on students. It is a young literature in a formative stage." (Appel et al, 1996)

Most of the information on the extent of diversity and its benefits comes from case studies and individual stories. However, there are some national databases that provide key information on minority student participation in higher education, and how this has changed over time. There are also some data available on the positive influence of diversity on student attitudes and behavior.

Information on Access

We know that an increasing number and percentage of minority students are planning to attend college directly after high school, enrolling in institutions of higher education, and receiving undergraduate degrees. As a result of these trends, the extent of diversity has increased significantly on American colleges campuses over the last few decades. What follows are some summary statistics that describe these trends over time.

As shown in Table 4, the proportion of all high school seniors in minority groups who planned to continue their education at four-year colleges and universities directly after high school increased between 1972 and 1992, although between-group differences have remained fairly constant.

Table 4: Percentage of High School Seniors Who Planned to Continue Their Education the Next Year

Race/ethnicity	4-Year Program		2-Year Program	
	1972	1992	1972	1992
Total	34	54	11	13
White, Non-Hispanic	35	55	12	12
Black, Non-Hispanic	32	52	5	11
Hispanic	11	20	11	26

Asian/ Pacific Islander, Non-Hispanic	47	65	18	12

Source: *Minorities in Higher Education*, NCES 97-372. Data sources: National Longitudinal Study of 1972, and National Education Longitudinal Study of 1988.

The distribution of college students across race/ethnicity groups has changed significantly from 1976 to 1994. As Table 5 shows, while only 16% of the enrollment in higher education in 1976 was from minority groups, in 1994 about one-quarter of the students came from minority groups. Hispanic college students are more likely to be enrolled in a two-year college than their white or black peers.

Table 5: Total Fall Enrollment in Institutions of Higher Education

Type and Control of Institution and race/ethnicity of student	Percentage Distribution in 1976	Percentage Distribution in 1994
All Students		
White, Non-Hispanic	84.3	75.4
Black, Non-Hispanic	9.6	10.5
Hispanic	3.6	7.6
Asian or Pacific Islander, Non-Hispanic	1.8	5.6
American Indian/Alaskan Native, Non-Hispanic	0.7	0.9
Four-Year Institutions		
White, Non-Hispanic	86.6	78.3
Black, Non-Hispanic	8.7	9.9
Hispanic	2.5	5.5
Asian or Pacific Islander, Non-Hispanic	1.7	5.5
American Indian/Alaskan Native, Non-Hispanic	0.5	0.7
Two-Year Institutions		
White, Non-Hispanic	80.2	71.0
Black, Non-Hispanic	11.2	11.3
Hispanic	5.5	10.7
Asian or Pacific Islander, Non-Hispanic	2.1	5.7
American Indian/Alaskan Native, Non-Hispanic	1.1	1.2

Source: 1996 Digest of Education Statistics. Data Source: IPEDS.

The distribution of bachelor's degrees conferred across race/ethnicity groups has also changed significantly from 1976 to 1994. As shown in Table 6, while only 12% of the

bachelor's degrees were conferred to students from minority groups in 1976-77, in 1993-94 about one-fifth of bachelor's degrees were awarded to students from minority groups.

Table 6: Bachelor's Degrees Conferred by Institutions of Higher Education

Race/Ethnicity of Student	Percentage Distribution in 1976	Percentage Distribution in 1994
All Students		
White, non-Hispanic	88.0	80.3
Black, non-Hispanic	6.4	7.2
Hispanic	2.0	2.0
Asian or Pacific Islander	1.5	1.5
American Indian/Alaskan Native	0.4	0.4
Nonresident Alien	1.7	1.7

Source: 1996 Digest of Education Statistics. Data Source: IPEDS.

As shown, in Table 7, the percentage changes in bachelor's degrees conferred were greatest for all groups of minority students, relative to whites.

Table 7: Bachelor's Degrees Conferred: Percent changes from 1981 to 1993

Race/Ethnicity of Student	Males: Percent change from 1981-1993	Females: Percent change from 1981-1993
White, Non-Hispanic	7.1%	27.7%
Black, Non-Hispanic	17.8%	35.5%
Hispanic	83.8%	131.5%
Asian or Pacific Islander, Non-Hispanic	150.3%	201.3%
American Indian/Alaskan Native, Non-Hispanic	44.1%	70.2%

Source: *Minorities in Higher Education*, NCES 97-372. Data Source: IPEDS.

Does an increase in the # of minorities attending college necessarily = an increase in diversity on campuses?

Information on Student Attitudes and Campus Environment

Given that the extent of diversity has increased significantly on American college campuses over the last few decades, as shown in the previous section, what has been the effect on student attitudes and the campus environment? Most data on this topic come from case studies and individual anecdotes, but there have been a few systematic analyses of these issues. The main source of data has been from the Cooperative Institutional Research Program (CIRP) of the Higher Education Research Institute at the University of California, Los Angeles.

CIRP administers a survey to college freshmen at hundreds of two-year colleges, four-year colleges and universities annually. The purpose of the CIRP survey is to provide a comprehensive portrait of both the changing character of entering freshmen and American society at large. The survey covers a wide range of student characteristics: parental income and education, ethnicity, and other demographic items; financial aid; secondary school achievement and activities; educational and career plans; and values, attitudes, beliefs and self-concept. The students are also asked their opinions on a number of diversity-related issues such as: (1) whether racial discrimination is no longer a major problem in America; (2) whether colleges should prohibit racist/sexist speech on campus; and (3) whether affirmative action in college admissions should be abolished. The students are also asked to rank a number of objectives including: influencing social values; helping others who are in difficulty; participating in a community-action program; helping to promote racial understanding; and, becoming a community leader.

For the freshmen class of 1985, CIRP also conducted a longitudinal follow-up of about 25,000 of these students four years later in 1989, and a somewhat smaller sample nine years later in 1994. Faculty from the 217 four-year colleges and universities attended were also surveyed, which allowed the gathering of information on institutional characteristics and objectives, including those related to diversity. The 1985 and 1989 data were analyzed by Alexander W. Astin to examine how students are affected by diversity and multiculturalism on campus (Astin, 1993).

With respect to the faculty survey, the faculty were asked their opinions on diversity issues related to the institution as a whole, as well as to their own individual research and teaching methods. The institutional variables include the extent to which the faculty believes that their institution is committed to the following goals: increasing the number of minority faculty; increasing the number of minority students; creating a diverse multicultural environment; and, developing an appreciation for multiculturalism. The faculty-level variables include information on whether the faculty uses instructional techniques that incorporate readings on racial and ethnic issues, and whether the faculty conducts research on racial or ethnic minorities. Astin has analyzed and provided descriptive information on these data. He also

shows positive and significant correlations between these variables and student outcomes, such as increased cultural awareness, and commitment to promoting racial understanding.

Astin found that the strongest positive effects of an institutional diversity emphasis were on the outcomes of cultural awareness and commitment to promoting racial understanding. The strongest positive effects of a faculty diversity emphasis were on the outcomes of cultural awareness and overall satisfaction with the college experience. Faculty diversity emphasis also had a positive effect on the student's chances of voting in the 1988 presidential election. In general, the variables on student diversity experiences were most often related to the outcomes of cultural awareness and commitment to promoting racial understanding. The largest number of positive effects was associated with the frequency with which students discussed racial/ethnic issues during their undergraduate years.

As Astin concludes, "The findings present a clear-cut pattern: emphasizing diversity either as a matter of institutional policy or in faculty research and teaching, as well as providing students with curricular and extracurricular opportunities to confront racial and multicultural issues, are all associated with widespread beneficial effects on a student's cognitive and affective development. In particular, such policies and experiences are associated with greater self-reported gains in cognitive and affective development (especially increased cultural awareness), with increased satisfaction in most areas of the college experience, and with increased commitment to promoting racial understanding. Emphasizing diversity and multiculturalism is also associated with increased commitment to environmental issues and with several other positive outcomes; leadership, participation in cultural activities, citizenship, commitment to developing a meaningful philosophy in life, and reduced materialistic values."

Astin's more comprehensive studies about student attitudes and campus environment are complemented by other less comprehensive studies and other research. As a recent literature review concludes: "...recent research continues to powerfully support a focus on the following institutional changes: climate, curriculum, involvement of students, and faculty-student and peer-student interactions, along with continuing efforts to diversify faculty and staff members. Not only is student participation in diversity related to changes in attitudes, openness to differences,

and commitments to social justice but it is also increasingly related to satisfaction, academic success, and cognitive development." (Appel et al, 1996)

Additional Information and Research in Progress and Needed

Much more case study work than identified in our paper to this point has been accomplished. In a companion paper, we identify some of the promising practices across the spectrum of components of a comprehensive perspective of diversity (*Successful Institutional Diversity Strategies).* In addition, there is additional work already underway at both the case study and more systematic level, as well as a growing volume of effort to buttress what exists. This section reviews that work in progress and the important areas for continuing work.

With respect to the collection of systematic data, some of the most interesting questions can only be answered with longitudinal data which, by definition, requires time to collect. The Cooperative Institutional Research Program (CIRP) has collected but not yet analyzed a second follow-up to the class of 1985 data providing a nine-year follow-up picture of their circumstances and attitudes. The National Study of Postsecondary Faculty (NSOPF) includes collected, but not yet analyzed information from the 1992-93 wave on faculty opinion about various diversity related issues. Among the questions are attitudes about fair treatment of ethnic and racial minority faculty members and opportunities for advancement. The 1996 annual report of the Andrew W. Mellon Foundation released in the spring of 1997 calls attention to the Foundation's efforts to make use of its large College and Beyond database which provides detailed histories of students at 34 academically selective colleges and universities, some of which date back to 1951, consistent with its pledges of confidentiality and protection of privacy. (The Andrew W. Mellon Foundation, 1997)

Some polling of opinion which goes beyond reactions to admissions and affirmative action has also been conducted which indirectly or, more recently, directly solicits views related to diversity in higher education. For example, The Public Agenda Foundation prepared three reports for the California Higher Educations Policy Center over the period 1993-1996 on attitudes about the California public higher education system. The reports were two surveys each

of approximately 800 Californians, interspersed by 29 in-depth interviews with business, academic, political and other state leaders. While most of the questions and issues centered on the public system in general, the attitudes about dealing with an additional 488,000 new students in the 1994-2205 period (known as Tidal Wave II) carries with it substantial diversity overtones because of the large component of that growth attributable to Hispanic residents (a more than 50% increase in total Hispanic population between 1995 and 2010). In the 1996 survey, Californians least preferred (61 percent to 32 percent) to meet the growth by limiting access. (Immerwahr, 1997)

And more direct data about community opinion on diversity are also beginning to be collected, sponsored by the Ford Foundation. Such information collected in the state of Washington from a sample of 600 registered voters reflect a positive view about diversity in the society and for many, though not all, of the diversity initiatives being tried in postsecondary education. Respondents, for example, uniformly support society's needs as described in the first section of this paper, the view that diversity education helps to bring society together, and a long list of specific diversity programs, but are more split on the motivation for and practical results of such activities, often depending upon the form of the question. (Elway Research Inc., 1997) And this type of polling is being extended to other locations.

Other work based on substantial data sets is beginning to appear. For example, one study of the class of 1982 from the national High School and Beyond data set provides evidence disputing claims that affirmative action harms intended beneficiaries by enticing minorities to colleges for which they are unprepared to meet the competition. (Kane, forthcoming) In some initial work on the College and Beyond data set, a study of minority under-performance relative to whites in selected elite institutions as measured by SAT and high school grade point averages cannot satisfactorily be explained by a host of observed background characteristics, and are, in the authors' opinions, most likely to be explained by what occurred during their higher education experiences. (Vars and Bowen, forthcoming)

In addition to the use of large longitudinal data sets, there are also some careful longitudinal studies at single institutions. For example, a 20 year matched-cohort study of

affirmative action and other special consideration admissions at the University of California, Davis, School of Medicine reflected stronger performance on grade scores and National Board exams by regular admittees, but no significant differences on failure rates on core courses, graduation rates, residency evaluations or completions, or practice characteristics. Special consideration admissions represented 20% on average of the classes over 20 years (ranging from 10-45% per year), of which about 43% were under-represented minorities. Four percent of the regular admittees were underrepresented minorities. For example, 94% of the special admissions graduated as compared with 97% of the regular admissions.

A considerable volume of case studies have been directed to increased access, and the companion *Successful Institutional Diversity Strategies* highlights several successful illustrations. The case work on effective strategies to keep students in college is growing rapidly in recognition that completion of courses of study are a crucial element of effective access to higher education opportunities. Based on studies to date and other anecdotal data, one needs to recognize the special contribution of Historic Black Colleges and Universities (HBCUs) and Hispanic Serving Institutions (HSIs) to retention and completion high expectations coupled with support, the presence of role models, high involvement and civic responsibility, and a caring environment. (Wolf, 1995; Townsend, 1994) These models may not transfer automatically to majoritarian institutions, but their components appear promising in many settings (Richardson, 1991; Richardson, Simmons, and de los Santos, 1987)

The work on the benefits of teaching and learning and the linkage to the employer community are among the sparsest literatures so far, though we believe much more is in progress than has been yet documented. We provide selected illustrations in the companion volume. In particular, the linkage between the higher education and the employer community is a growing one.

NOTE: AT THIS POINT, OUR INTENTION IS TO INCLUDE TWO TO FOUR EXAMPLES OF INITIATIVES COMING FROM EMPLOYER INITIATED ACTIVITIES. WE LACK A ROUNDED PICTURE OF EMPLOYER INITIATIVES PARTICULARLY WITH RESPECT TO RECRUITING AND PARTNERSHIPS WITH

HIGHER ED INSTITUTIONS. WE ARE PURSING IBM, XEROX AND CORNING. HECTOR __ WE KNOW YOU HAVE IDENTIFIED COCA-COLA AND AETNA. WE WILL BE UNABLE TO GET TO OUR CONTACTS UNTIL AFTER CHRISTMAS. HECTOR IF YOU CAN HELP, PLEASE CALL.

In general, the literature reviews that we have examined suggest that the direction in which diversity initiatives are proceeding are promising, and should be further explored and evaluated.

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INSTITUTIONS' PURSUIT OF DIVERSITY IN HIGHER EDUCATION— SUCCESS STORIES

In the following paper, the process for selecting successful institutional strategies was as follows. First, we relied on references made during recent conferences on diversity; next, we used an American Council on Education reference book on higher education diversity resources. Third, we utilized several other recent sources of material on outstanding programs for increasing access (Westat, 1992) and for improving retention and enhancing teaching and learning (Skinner and Richardson, 1991; Appel et. al.). Each institution so selected was then contacted to obtain permission for citing its initiatives and to verify the material cited. We also asked each institution to provide additional detailed information and evidence of success, if available.

December 23, 1997

INSTITUTIONS' PURSUIT OF DIVERSITY IN HIGHER EDUCATION—SUCCESS STORIES

Why Are Higher Education Institutions Striving for Diversity?

Most higher education leaders attach substantial value to seeking diversity in the educational experience they offer for their students, their institutions, and the larger society. The foundation for this judgment is based on some widely shared beliefs:

- The postsecondary experience influences not only a person's career interests and potential, but also the pursuit of leisure and the manner in which the individual interacts with, and participates in, society. Further, motivation and self-esteem, critically linked to educational attainment, contribute significantly to participation in the neighborhood, community, schools and the larger political society.

- Because of its importance and impact, higher education should be available to all those willing and able to seriously participate. For the postsecondary experience to maintain its importance for individuals and society, the twin goals of access and quality must be pursued simultaneously.

- Schools, the work force and society are increasingly diverse. It follows that higher education must and will become more diverse.

The widespread agreement that surrounds these beliefs does not, however, extend to the strategies for pursuing quality and diversity in higher education. Using traditional admission criteria and standards, higher education institutions have enrolled fewer students of racial/ethnic minority groups than their proportion in the U.S. population. This is especially true for African Americans, Hispanics and American Indians. In 1995, the college participation rates for those who graduated from high school in the last twelve months were 51.4% for African Americans, 53.8% for Hispanics and 62.6% for whites. (NCES Digest Education Statistics, 1996, Table 179) And of African Americans and Hispanics who are enrolled, a smaller proportion complete their postsecondary education programs than for other racial/ethnic groups. In 1995, the percent of those aged 25 – 29 in 1995 who have achieved baccalaureate degrees are 15.3% for African Americans, 9.3% for Hispanics and 26% for whites. (Carter & Wilson, 1996-97)

Diversity programs have been pursued by many institutions in an attempt to correct this imbalance. Affirmative action programs for college admission, however, are being hotly contested in the courts based on the presumptions of reduced quality in the higher education institutions and reverse discrimination. It is not the purpose of this paper to present the evidence for or against affirmative action or to refute the charges of its critics. Rather, the starting point for this paper is the assumption that diversity in higher education is both a valuable and necessary condition for the continuation of a pluralistic, democratic society.

Given that higher education substantially contributes to lifelong learning and work force participation, what does racial/ethnic diversity contribute to the higher education experience? We begin by positing the following statements about the value of diversity in higher education:

- Diversity offers the opportunity for students to understand and appreciate life experiences of persons different from themselves.
- Diversity offers the opportunity for students to gain a richer understanding of multiple cultures and therefore multiple perspectives on family life, work ethics, political beliefs, literature and the arts.
- Diversity, through classroom discussion, provides an opportunity for students to more fully appreciate the influence of their own culture on learning experiences. It also heightens awareness of cultural differences.
- Diversity provides opportunities to develop important "team player" skills so critical in subsequent work force participation.
- Diversity in higher education allows students to develop important skills in self-expression that ultimately prepare them for active participation and leadership roles in their neighborhoods, communities and schools.

These potential "outcomes" of diversity in higher education are complex, and have been infrequently measured. Empirically powerful evidence that diversity brings about these outcomes is the subject of a three-year study just initiated by the Department of Education. Perhaps the largest study to date (Astin, 1991, based on 20,000 students and 25,000 faculty members), concludes that student growth and change over time and environmental factors, such as institutional characteristics and student experiences in college, are essential to an understanding of the contribution of diversity to the education of all students. Various

Department of Education databases also provide a substantial amount of information on specific aspects of student enrollment, such as financial aid and composition by race, ethnicity, gender and age.

In the meantime, numerous institutions, higher education organizations and foundations have been studying aspects of diversity in higher education. While most of these studies have been regionally or institutionally-based, or have included a relatively small number of institutional case studies, there are, nevertheless, many important lessons about how diversity is effectively pursued by institutions of higher education. The contributions to the knowledge base about the successful pursuit of diversity are of two types: one, broad concepts about what works and what doesn't work that can be termed "theoretical contributions"; and two, research about specific institutional strategies in pursuit of diversity.

What is the Theory That Guides Institutions in Pursuit of Diversity?

Much has been written about the value and importance of diversity in higher education. These conclusions are chiefly based on both democratic ideals and demographic information about the current and projected growth of minority groups in the U.S. population, made particularly striking in contrast to the decline in the Anglo share of the population. Our schools, our workforce, and our society will be predominantly "minority" by the year 2060, according to demographer Leon Bouvier.

and others?)

American higher education is undergoing a transformation from the type of system that served industrial society to one that can serve the needs of a post-industrial age. A large part of that transformation is based on the composition of the post-industrial society. State, institutional and national leaders in higher education have foreseen the necessity of adapting the higher education system in this country to serve the changing population. A review of the literature about diversity in higher education reveals several important guidelines that serve as an emerging "theory" about how institutions pursue diversity:

- *Quality and diversity must be simultaneously pursued.* Higher education quality, expressed as student achievement outcomes, can be maintained and enhanced in a diverse campus environment if institutions are firmly committed to both goals. This requires both institutional leadership and changes in the learning environments. All students, the higher education enterprise, and ultimately society will benefit from such institutional transformation. (Appel, et.al.), (Richardson & Skinner, 1991)

- Ensuring *"fair outcomes" in higher education* for previously underrepresented minorities *includes both access (enrollment) and completion (graduation).* Institutions that admit larger numbers of minority students to aid their enrollment objectives must also provide a quality educational experience for these students and assist in overcoming any incoming educational deficiencies. (ECS, 1990), (Richardson & Skinner, 1991)

- *Institutions seeking to provide quality, diversity and fair outcomes for historically underrepresented minorities typically move through three stages* in pursuit of these goals – first, reducing barriers to participation by minorities; second, providing assistance for these students to stay in school and complete their educational programs; and third, adapting the curriculum, pedagogy and assessment practices to more accurately reflect and improve upon the strengths and weaknesses of all students. (ECS, 1990), (Richardson & Skinner, 1991)

- In this third stage of institutional development in pursuit of diversity (adapting the curriculum, pedagogy and assessment), *institutions capitalize on the strengths of diverse student bodies by utilizing the concept of "collaborative intelligences".* This concept embodies a variety of perspectives on society and the individual and recognizes the interdependence of individual and collaborative intelligence. (AAC&U, 1997)

What are Some Effective Institutional Strategies in Pursuit of Diversity?

These three stages in the life cycle of an institution seeking diversity and quality aid in organizing information about the successful practices of institutions. It is important to understand that while the three stages are conceived as evolutionary, institutions that have reached the "third stage" must continue to explore the effectiveness of strategies used in achieving the first two stages – access and retention – with ongoing modification of those strategies in mind.

We have added a fourth stage to this model – effective strategies for establishing linkages with employers. Although work in this area is just beginning, institutions with a commitment to diversity understand the importance of ensuring that the "value-added" on a diverse campus be appreciated and rewarded by potential employers.

Effective Institutional Strategies for Increasing Access

Affirmative action is only one strategy for increasing access of historically underrepresented minorities to higher education. Many institutions have engaged in other successful strategies for increasing minority representation in the pool of applicants. Some of these successful strategies include: outreach to local high schools and middle schools through establishing school-university partnerships that include teacher education and professional development initiatives; participation of high school students in university-sponsored learning institutes, summer programs, and/or extracurricular activities; early identification of promising college students and mentoring programs; institutional participation in college fairs and other recruitment efforts; and targeted recruitment and outreach to inner city high schools with high concentrations of minority students. The potential goals of such programs can include:

- To increase overall enrollment through closer collaboration with area high schools;
- To target high schools with large minority enrollments in order to increase the pool of minority applicants;
- To assist in preparing high school youth for postsecondary educational experiences;
- To provide guidance to high school youth on academic and financial requirements for attending college; and
- To help raise the educational aspirations of local youth.

There are numerous examples of creative approaches taken by institutions to increase the diversity in the pool of applicants. We highlight a couple of these below.[1] Strengthening access to higher education was a conference theme in "Educating One-Third of a Nation", the sixth

[1] The process for selecting successful institutional strategies was as follows. First, we relied on references made during recent conferences on diversity; next, we used an American Council on Education reference book on higher education diversity resources. Third, we utilized several other recent sources of material on outstanding programs for increasing access (Westat, 1992) and for improving retention and enhancing teaching and learning (Skinner and Richardson, 1991; Appel et. al.). Each institution so selected was then contacted to obtain permission for citing its initiatives and to verify the material cited. We also asked each institution to provide additional detailed information and evidence of success, if available.

conference on this topic, held in Miami in October of this year. The conference sponsors [2] were intensely interested in creative approaches to diversifying the applicant pool in the wake of recent setbacks to affirmative action. Highlighted by Reginald Wilson, a Senior Fellow at the American Council on Education was an admissions strategy being implemented by the University of California.

[2] The conferences which served as sources of material on effective institutional diversity practices were: "Hopwood, Bakke and Beyond," October 6-7, 1997, sponsored by the American Association of Collegiate Registrars and Admissions Officers; "Educating One-third of a Nation" Sixth Conference on Diversity in Higher Education, October 16-18, 1997, sponsored by the American Council on Education, the American Association of Colleges and Universities and the Ford Foundations's Campus Diversity Initiative; and the Conference on Civil Rights of Latinos, December 5, 1997, sponsored by the Harvard Civil Rights Project, and the Tomas Rivera Institute.

University of California System

In July 1995, the University of California Board of Regents adopted a resolution called SP1, which called for the elimination of race and gender as a consideration in the admissions process. In July of 1996, the President of the UC system issued a new set of undergraduate admissions guidelines to go into effect in the spring quarter of 1998 or in the fall quarter 1998 at UC Berkeley, which uses the semester system.

The entrance requirements established by the University require that the top one-eighth of the state's high school graduates, as well as those transfer students who have successfully completed specified college work, be eligible for admission to the University of California. When there are more UC eligible applicants than spaces available, the campus selects between 50 and 75 percent (compared to 40 to 60 percent under the old policy) of their students based on academic performance, as assessed by a review of the following: high school GPA, the depth and breadth of academic preparation, and scores on required standardized tests.

In the second step, the remaining 25 to 50 percent—not including those admitted by exception—are selected on the basis of academic achievement and personal achievement, as assessed through a comprehensive review of all information provided on the application, including academic performance as described above plus the following: extracurricular accomplishment, personal qualities such as leadership or motivation, and likely contribution to the intellectual and cultural vitality of the campus.

As part of the same resolution, the Regents voted to establish an Outreach Task Force to develop new strategies and sources of funding for programs to attract and academically prepare minority and disadvantaged students to attend UC. The 32-member task force includes representatives of the business community, the university, and other segments of education and organizations engaged in academic outreach (Sources: Wilson, 1997; http:\\www.ucop.edu).

Other examples of institutional strategies for increasing the pool of applicants feature early outreach programs, generally into middle and high schools. Several illustrative programs are described below.

Xavier University – Louisiana

Xavier sends more African Americans to medical school than any other institution in the country. Their pre-medical students are accepted into medical and dental schools at better than twice the national average. Ninety-two percent of the Xavier graduates who enter medical and dental schools go on to become practicing physicians or dentists. Xavier also sends more African Americans to pharmacy school and has educated nearly 25 percent of the 6,000+ black pharmacists practicing in the United States. Over the last six years, Xavier graduates have gone on to professional and graduate schools at a rate of almost 40 percent.

Xavier's recruitment success is based on extensive programs of early outreach to local high schools and middle schools. For example, the Xavier Summer Science Academy involves nearly 2,000 high school students each year.

Another program, the Model Institutions for Excellence (MIE) program is designed to enhance infrastructure at selected institutions to educate students who have been historically underrepresented in the fields of science, engineering, and mathematics (SEM). Currently, Xavier has a retention-to-graduation rate of approximately 55 percent of its SEM majors. One goal of the MIE program is to increase the retention rate to 75 percent through a series of activities, including establishing student resources and mentoring centers, implementing curriculum revisions and development, developing a financial assistance structure that will effectively address student and university needs, and other activities. With over 55 percent of the undergraduate enrollment consisting of SEM majors, significant retention increases could be realized by improving the rate of success of this specific population. (Source: Wilson, 1997; U.S. Department of Education, 1997; http://www.xula.edu)

University of Alaska at Fairbanks

In 1983 the University initiated the *Rural Alaska Honors Institute (RAHI)*, a program designed to better prepare Alaskan Native students for postsecondary education. The program targets academically promising Alaskan Native college-bound juniors and seniors. Approximately 50 students a year are selected through a competitive process to participate in a six-week summer institute funded by the University. During the summer institute, students can take up to 9 college credits and participate in numerous activities designed to introduce them to Western society and reduce their anxiety about the higher education system. The vast majority of students who participate in RAHI do go on to higher education and the majority of those students attend the University of Alaska system. Beyond increasing enrollment at the University, the program strives to increase retention by providing these students with support while they are attending school. RAHI is in the process of collecting data and conducting an analysis of the program. (Westat, 1992)

University of Texas at El Paso

One initiative, targeting low-income, potential first generation Hispanic females and their mothers, was begun in 1986 as a collaborative effort of UTEP, area school districts, and the El Paso YWCA. The program has grown from serving 33 girls from three school districts in the first year, to serving 300 girls from all nine local school districts. To date, the program has served over 2,000 female Hispanic students and their mothers. Students are selected to participate in the intensive program after they have completed their 5th grade year. During the 6th grade, students participate in: 1) an open house and campus tour to get acquainted with faculty and students from all departments; 2) a career day where 40 professional women from a wide range of professions introduce the girls to career opportunities; 3) a leadership conference involving both lectures and ongoing community service and opportunities to assume leadership roles; and 4) a summer camp where the girls spend two days and one night on campus participating in academic and social activities. The program then provides ongoing activities, such as financial aid workshops, field trips to learn about careers, and programs to provide hands on computer training. (Westat, 1992)

An evaluation utilizing focus groups conducted in 1994 found that the program has been successful in achieving its goal of increasing college aspirations and access by Hispanic females. Preliminary findings from current research show that compared to a control group, the students who were participating in this program had higher high school GPAs, were enrolled in more college preparatory classes, and had a lower rate of pregnancy.

The institution has also aggressively pursued overall recruitment from local high schools. Its provisional admissions program and extensive articulation with neighboring El Paso Community

Santa Ana College—California

This Hispanic Serving Institution (HSI) is located in Orange County, California. It is projected that the district's population will be 71 percent ethnic minority by the year 2000. To increase this community's access to postsecondary education, Santa Ana College (formerly Rancho Santiago College) utilizes a multiethnic, multilingual staff and multilingual materials in their extensive outreach activities. Through programs such as Kinder Caminata, children as young as kindergarten age visit campus to be introduced to the postsecondary experience.

The institution also has collaborative projects with minority community groups and 12 school districts. During the academic year, 700-800 minority and low-income students from surrounding school districts visit Santa Ana College each week as part of their "College is My Future" program. Students tour the campus, visit classes and talk to faculty members. Another initiative called "Puente Project", which has a completion rate of 60 percent, offers writing instruction and counseling for Latino students. (Source: ACE, 1993; http://www.rancho.cc.ca.us)

There are also a growing number of mentoring and early intervention programs, initiated by school districts or state education departments, whose purpose is primarily to increase educational attainment and decrease dropout rates. Such programs tend to involve partnerships with community organizations and/or institutions of higher education. Highlighted below are some illustrative examples of those early intervention programs involving partnerships with higher education.

Advancement Via Individual Determination (AVID) San Diego, CA

AVID is a college preparatory program that focuses on acceleration rather than remediation. The program aims to increase college enrollments among all students, but especially African American, Latino, Native American and low-income students, and to restructure teaching methodologies of schools to provide college preparatory courses in high school. Middle school students are also encouraged to take courses that will guide them toward a college preparatory curriculum. High school and college teachers jointly developed the curriculum. More than 30,000 students in almost 600 schools in 11 states are served by AVID. More than 92% of its graduates enroll in college, with 89% remaining in college for more than two years. (Source: U.S. Department of Education, 1997)

Early Identification Program, George Mason University, Fairfax, VA

This program seeks to increase the number of minority students entering college. It involves a partnership between George Mason University and three local school districts, as well as several area corporations. Minority students with academic potential participate in a summer academic session at the university, and attend tutorial sessions at their high schools during the school year. Approximately 300 eighth and ninth graders are served annually. The program maintains information on courses taken, grades, SAT scores and college application status of participants. The program reports a 71% retention rate and a 95% college-going rate. (Source: U.S. Department of Education, 1997)

Early Outreach Hispanics Math/Science Education Initiative, University of Chicago College of Education

This program's goal is to increase the number of Latino students prepared to enter college and professional careers, through partnerships with the University of Illinois at Chicago, Malcolm X College, two local high schools and their feeder middle schools. Annually, about 175 students in grades 8 through 11 are served. To date, 81% of program participants have taken science and math courses in high school, 100% have completed high school, and 75% have gone on to college. (Source: U.S. Department of Education, 1997)

Liberty Partnerships Program, New York State

Funded by the New York State Department of Education, this program provides partnership grants to postsecondary institutions, community organizations, industry, and schools/school districts to decrease the state's high school dropout rate. The partnership grants provide comprehensive services to at-risk students in grades 5-12, including academic support; academic, personal and family counseling; and college advisement. The school retention rate is about 98 percent. In 1996, the high school graduation rate was about 92%, with 70% of the graduates aspiring to attend college.
(Source: U.S. Department of Education, 1997)

It is not enough to increase access to college for racial and ethnic minorities. Recent trends in minority students' educational attainment (as cited in ACE's Fifteenth Annual Status Report on Minorities in Higher Education) indicate that institutions must offer assistance to these students so that they stay in school and complete their academic programs.

Effective Institutional Strategies for Helping Students Stay in College

Institutions recognize that their incoming students differ in their level of educational preparedness for the college experience. Other potential barriers to success in the academy include differences in cultural orientations, financial impediments and family responsibilities, particularly for older students. In order to maintain institutional quality and provide assistance to under-performing students, institutions have devised numerous "helping strategies". Some of these strategies include: increasing faculty advisement, faculty mentoring, peer tutoring, faculty tutoring, establishing effective tracking systems to monitor student academic performance and attendance, special counseling to aid with personal and financial impediments to school achievement, and enhancement of campus climate. The objectives of many of these efforts can include:

- Maintaining institutional academic standards through the provision of extra assistance to students experiencing academic difficulties;
- Helping students persist in school to completion of their programs;
- Transmitting the expectation that all students can succeed if adequately supported in their educational endeavors.

Following are some examples of programs in institutions that have successfully promoted minority student retention.

Boston College, Chestnut Hill, MA

The AHANA (African-American, Hispanic, Asian and Native American) concept was first defined by Boston College in 1979 when students objected to the name "Office of Minority Student Programs" then used by the University, citing the definition of the minority as "less than." The AHANA concept has now been adopted in various forms at over 30 institutions.

At Boston College, the Office of AHANA Student Programs (OASP) develops, implements and coordinates a variety of programs that support and enhance the academic performance of undergraduate AHANA students. These programs include activities such as tutorials, academic advising, personal and group counseling, performance monitoring, and career planning. The aim of these services is to help AHANA student to excel academically and to overcome feelings of alienation, isolation and loneliness.

According the Director of OASP, the most important achievement has been the "complete reversal of a 17 percent retention rate in the late 1970s to a current retention rate of over 93 percent for the target group of students." This target group is served by the Options Through Education Transitional Summer Program (OTE). OTE is a pre-college enrichment program annually serving 50-60 educationally and financially disadvantaged AHANA students who are highly motivated, potential achievers. Students are chosen to participate in OTE by OASP staff reviewing applications of students who might otherwise not be able to attend Boston College. The average OTE student has an SAT score 400 points below the Boston College average. The intensive summer program familiarizes participants with Boston College's academic and administrative resources, strengthens their scholastic skills and acquaints them with the campus and surrounding community. During their four years at Boston College OTE students are provided support, and their progress is closely monitored with early feedback from faculty (Source: ACE, 1993; http://www.bc.edu).

Mount St. Mary's College, Los Angeles.

Once a predominantly white, upper middle class institution, this college is now remarkably diverse as a result of changing area demographics. For undergraduates, the college offers both two-year associate in arts degrees on the downtown Doheny campus and four-year baccalaureate degrees on the Chalon campus in west Los Angeles. The alternative access program on the Doheny campus admits students who have low GPAs and poor test scores, but show potential for success in college as demonstrated through interviews. These students are often minority students who are the first in their families to attend colleges and must struggle with poverty, inadequate academic backgrounds and pressing family obligations. Approximately 68 percent of those who come as freshmen earn their associate degree in two years or transfer to a baccalaureate program. MSMC achieves such success by focusing on student success. Students are tested, academic weaknesses are analyzed, and learning prescriptions are devised by the Learning Resource Center. Faculty and administration believe it is their role to intervene when a student is in difficulty. In addition, its Institute for Student Academic Enrichment provides career, personal and financial counseling; provides tutoring for courses and graduate exams; sponsors cultural events and facilitates discussions about the events; and offers workshops on study skills and reading and writing improvement. (Sources: Sawchuk, 1991; Wilson, 1997; ACE, 1993)

Oklahoma City University

Oklahoma City University (OCU) is a private, independent university with an FTE of 1,800. The Office of Hispanic, Asian and Native American Services (HANA) was established in 1981-1982 to serve this population, with special emphasis on the Native American population in the surrounding area. The school actively recruits Native American students through outreach programs and a variety of scholarships funded by Honda, Coca-Cola and individual endowments. Since the development of the HANA Office, Native American enrollment has increased from an average of 8 students per year to approximately 135 students per year. In addition to increasing enrollment, the school, through a variety of support programs such as counseling, tutoring, financial aid, off campus community service for credit, summer bridge programs, and the type of personal attention available at a small institution, has increased the graduation rate of HANA students to 45 percent (approximately the average for the entire student body).

OCU's Native American Legal Resources Center enriches the opportunities of Native American students and students interested in pursing careers in American Indian Law. The Center fosters paralegal training and internships linked with the state's tribal governments. (http://www.okcu.edu)

The University of North Carolina System

According to a study conducted by the Quality Education for Minorities Network (AACRAO, 1997) and funded by the National Science Foundation, North Carolina has outperformed other states in achieving proportional representation of minorities among four-year college graduates. Among the many successful retention strategies listed were the maintenance of Minority Affairs Offices, accessibility of faculty for academic advisement, peer study groups, peer tutoring and formal collaboration with business, state and professional organizations.

As an example, the UNC at Charlotte provides a special student advising program in which peer tutoring and advising is offered to freshmen minority students. In addition, since 1986 the institution has been offering a special summer bridge program, *University Transitional Opportunities Program (UTOP),* to improve the retention rate of minority students. Participants are randomly selected from minority enrollees and participate in seven hours of coursework and co-curricular activities designed to introduce students to campus and community resources. In 1996, UTOP students achieved an average GPA near that of the majority population. (ACE, 1993)

An indication that the state system has been actively pursuing minority student participation and retention is the selection of UNC—Greensboro (using peer nomination and College Board retention data) as one of four institutions for the study of successful retention practices. (Appel, et.al.)

Effective Strategies for Teaching and Learning in a Diverse Institution

In the previous stage in a diverse institution's life cycle, the focus is on *adapting the students* to the standards and culture of the institution. In the third stage, *institutions adapt* to their changing student bodies to capture the full educational potential. This involves changes in the academic essence of the institution – the curriculum, the pedagogy, and the assessment practices. Most institutions are at an "experimental stage" with regard to this level of diversity. There have been no known comprehensive evaluations of the educational benefits of diversity. Nevertheless, some strategies being pursued include: curriculum revision, particularly in the social sciences and humanities, where cultural perspectives significantly influence learning; increasing the diversity of faculty; altering pedagogical techniques to include more discourse, the representation of multiple perspectives, and the increasing recognition of multiple learning styles, such as a greater appreciation for the value of hands-on learning; and experimentation

with assessment techniques and instruments that more adequately capture multiple teaching and learning styles.

The potential objectives addressed by such strategies include:

- To broaden and deepen learning experiences for all students;
- To provide a diverse faculty throughout all academic disciplines; and
- To transform the institution into a multicultural learning organization that provides superior academic experiences.

Arizona State University

ASU has been known for its early initiatives to improve access and retention by minorities. Project Prime, begun in 1987 in collaboration with the Educational Testing Service and the Hispanic Higher Education Coalition, seeks to reach underrepresented minorities while in high school, particularly those with an interest in math and science. (Westat, 1992) It also has a program to increase minority student retention known as the Coalition to Increase Minority Degrees.

This initiative sponsors a math-science honors program for minority students which targets the production of 182 minority Ph.Ds per year in engineering, science and math by the year 2001 – a 400% increase over current levels. (Source: ACE, 1993) Richard Richardson cited by Wilson in October has developed a list of "Seven Principles of Good Practice", addressing the University's teaching and learning practices:

- Student-faculty contact
- Cooperation among students
- Active learning (hands-on)
- Prompt feedback, especially early warning of problems
- More time on task
- High expectations, and
- Diverse ways of learning.

Iowa State University—Ames, IA

Beginning in the 1997-99 catalog, all undergraduate students are required to fulfill graduation requirements in two areas: U.S. Diversity and International Perspectives. The goal of these requirements is to help prepare students to meet the challenges of responsible citizenship and effective professional roles in a culturally diverse global community. The focus of the U.S. Diversity requirement is the multicultural society of the United States, and it aims to provide students with insights that enhance their understanding of diversity among people in the U.S. Courses designated to meet the ISU "U.S." requirement must address significant manifestations of human diversity with in U.S. society.

Examples of courses that might meet this requirement include courses on the works of U.S. authors of a particular racial or ethnic group previously neglected in the curriculum or courses on the history of the civil rights movement in the United States. Students are required to take three credits of coursework in both U.S. Diversity and International Perspectives. (McTighe Musil, 1997; http://www.public.iastate.edu)

Oregon State University—Corvallis, OR

The Indian Student Affairs Office, once part of the Office of Multicultural Affairs, operates numerous programs that strive to enhance University awareness of American Indian students, faculty and staff, increase the number of American Indian students on campus, assist American Indian/Alaska Native students from the admission process on through their graduation, improve the quality of the education they receive while on campus, and provide resources for the development of a racially and ethnically relevant curriculum.

Students are required to take a specified number of courses that have issues of diversity infused in them. To help faculty who were interested in infusing diversity into their current curriculum, the university provided voluntary seminars.

Oregon State-Wide is a distance learning program run by the Office of Continuing Higher Education. Through this program, which is in its first year of operation, the University works with nine federally recognized tribes to develop curricula that incorporate each individual tribe's history and culture. (Source: ACE, 1993; http://www.osu.orst.edu)

Harvard University—Cambridge, MA

In addition to its extensive efforts to recruit and retain minority students, Harvard undertakes a number of initiatives to encourage minority faculty development, and to diversify its curricula.

The Graduate School of Education's Native American Program is designed to prepare Native Americans to fulfill positions of leadership in education and includes Native American leadership development in all disciples. In 1995, the program received a show of support from the president of Harvard and was named an inter-faculty initiative. The program works with all nine schools within Harvard to develop Native American related courses. In addition, the program administers a university-wide *Native American recruitment* initiative in collaboration with Harvard's admissions office. In 1995-96, Harvard's Native American enrollment increased 12 percent from the previous year and projections show that the 1996-97 enrollment has increased another 8 percent.

The Minority Postdoctoral Fellowship Program in the School of Public Health attempts to increase the representation of minorities available to fill faculty positions at other institutions, and the Kennedy School of Government sponsors several national leadership forums for African American and Hispanic public administrators.

Harvard Medical School's Faculty Development and Diversity (FDD) initiative was created in January 1995 to connect the myriad of diversity initiatives underway at the medical school. FDD is committed to working toward increased faculty and trainee diversity by expanding recruitment efforts, supporting retention of underrepresented minority faculty and trainees, and helping overcome any barriers to promotion that exist for minorities and women. (Sources: ACE, 1993; http://harvard.edu).

In the 1993 *Sources* there were few projects listed for curriculum, and no categories for teaching and learning. The few curriculum projects were generally targeted to serving minority students explicitly, i.e. not typically directed to enriching the curricular exposure of all students. As mentioned previously, this is a relatively new area of endeavor.

Effective Strategies for Establishing Linkages with Employers

Corporations are increasingly pursuing diversity initiatives due to the changing demographics of the work force, the growth of multinational enterprise and the changing nature of available jobs. There is also a growing recognition that "diversity skills" are an important

contributor to work quality and productivity. However, the academy has not tended to view "job placement" as one of its functions. Institutional-corporate linkages for the preparation and recruitment of workers with diversity skills have only recently been initiated.

The Ford Foundation has developed an initiative to promote greater links between institutions and corporations. Called the "Campus Diversity Career Roundtable", this initiative has been sponsoring such roundtables to encourage greater dialogue and raise awareness. Both institutions and corporations have a lot to gain by this process:

- Institutions learn about the skills valued by corporations and what they see as the weaknesses in new recruits.
- Corporations learn how institutions are preparing their students for participation in a diverse workforce.

The Foundation has assembled a package of materials and protocols for schools to use in organizing these roundtables.

A few other examples of institutionally initiated efforts to place their graduates with employers seeking diversity skills follow.

University of Washington, Seattle

The Minority Job Placement Program has two objectives. First, the program provides career guidance and job placement services such as counseling, resume and interview assistance, internships, and job referral programs to students. Second, the program works with employers to provide assistance to companies trying to diversify their workforce. The program develops methods, such as workshops and career days, for companies to communicate with minority students. Career day started in 1970 with 10 companies interested in engineering graduates and has grown to include 100 companies interested in graduates from all programs. In addition, the Program works with employers to develop internship programs, which often lead to full time employment after graduation for minority students.

The Minority Education Division of the Graduate School participates in the Western and National Name Exchange, a consortium of 27 institutions that collects and exchanges the names of minority juniors and seniors annually. The primary purpose of this effort is to assist in graduate education recruitment. (Source: ACE, 1993)

University of Vermont, Burlington

Notable for its early recognition of the value of a multicultural education to employers, the University's Graduate College promotes the professional development of "multicultural undergraduates" at the University and other institutions by securing funding for their graduate education and professional development as well as their post-graduate placement in significant positions in higher education. (Source: ACE, 1993)

The foregoing examples of successful institutional practices in attaining and maintaining diversity provide many useful guidelines for other institutions that may not be as advanced in their pursuit of diversity. However, much work remains in demonstrating the educational benefits of diversity. The research to date has not produced such empirically powerful evidence. What is required to answer these questions is cross-institutional, longitudinal research that can be generalized beyond the individual institution and research on all students and their learning and subsequent outcomes. The study recently commissioned by the Department of Education begins to undertake this task. This work must be continued beyond the three-year span of the study and into the workplace, where certain important outcomes of diversity in higher education will be tested.

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