

Chapter III Useful Documentation to Support and Defend Admissions Policies

The Supreme Court's *Grutter* and *Gratz* decisions provide guidance as to how an institution may implement an admissions program that meets constitutional requirements. An institution seeking to attain the benefits of student body diversity should employ the steps outlined in Chapters I and II. First, the institution should define the goal: to achieve meaningful diversity and reap the benefits flowing from diversity. As the Supreme Court recognized, the goal of student body diversity is compelling, and our educational institutions should play a leading role in defining what student body diversity is and what benefits flow from it. Second, the institution should consider the best way to achieve diversity, by looking at the admissions strategies available to it. An admissions policy should be carefully crafted after considering a range of alternatives, including race-neutral alternatives. Third, the institution should design with care an admissions policy that balances its diversity goal with the other goals of the institution. Fourth, an institution should periodically evaluate both the goal of diversity and the means for achieving it, to see if either changes within the institution or external forces necessitate modifications to the admissions process.¹¹⁰

An institution should document these well-considered steps when designing an admissions policy. A written record will help an institution to define its goals, design its policy, and—most of all—review its progress over time. Of course, documenting the process that went into creating an admissions policy will also assist the institution in defending the policy in the rare circumstance that it is subject to challenge. To the extent that the University of Michigan Law School created and kept records explaining the benefits of diversity and the advantages of its admissions policy, those records helped the courts to understand why the admissions policy made sense, educationally and legally. To date, courts have not provided specific direction as to the kind and amount of evidence that will suffice in every context. However, the Supreme Court's analysis in *Grutter* of the evidence submitted by the University of Michigan Law School—which the Court deemed sufficient—provides guidance as to the types of evidence that an institution, which is similarly dedicated to attaining or preserving a diverse student body, may gather to support its own program.

This Chapter provides guidelines on the documentation an institution should create, collect, and keep in developing and maintaining an admissions policy that seeks to achieve student body diversity. In particular, these guidelines highlight the types of documentation useful to show that an institution: (1) defined diversity and its benefits; (2) considered alternative policies to achieve student body diversity; (3) carefully designed a flexible, effective policy; and (4) evaluated the policy over time.

A. The Benefits of Diversity

In order to effectively establish the connection between the goal of diversity, the admissions policy, and the institution's overall mission, a college or university should have a clearly articulated understanding of each. In *Grutter*, the Court deferred to the University of Michigan Law School's "educational judgment that . . . diversity is essential to its educational

mission.”¹¹¹ An institution seeking student body diversity should document that it has made the same judgment, and that it has a clear concept of the meaning of diversity and how diversity is essential to its educational mission. In order to make this determination, of course, an institution first must have a mission statement that expresses its goals and values. With that mission in mind, an institution should expend the effort to articulate what diversity is and how it contributes to the mission. Then the institution should record what it learns through this process. It is easy to embrace big, abstract objectives without articulating why an institution believes in them. Taking the time to articulate the benefits of diversity will not only justify the admissions policy, it will also enhance its effectiveness.

An institution need not start from scratch. Studies demonstrating the positive results of racial and ethnic diversity are plentiful, and this Chapter highlights some noteworthy references. In *Grutter*, the Supreme Court stated that “[t]he Law School’s assessment that diversity will, in fact, yield education benefits is substantiated by [the school] and their *amici*.”¹¹² The University of Michigan Law School’s support included expert reports, empirical social science evidence, and additional evidence showing that diversity produces substantial, tangible educational benefits.¹¹³ Any educational institution can easily, and at little cost, amass similar evidence.

1. Useful Internal Documentation

An institution should define diversity and purposefully consider its benefits to that particular school. In addition to consulting materials generally supporting the benefits of diversity, see Section A.2., an institution should generate (within the resources available to it) information relating to diversity on its own campus. Institutions can collect this information by engaging in some, many, or all of the following practices:

- Review and update your mission statement. Consider the ways in which diversity furthers the objectives expressed in your mission statement.
- Hold meetings of admissions officers, administrators, volunteers, students, alumni, and/or faculty to discuss what diversity means and whether it is changing.
- Discuss how diversity serves the educational mission, both generally and at the institution in particular.
- Establish a standing committee on diversity or engage in a facilitated planning process to explore diversity issues.
- Consider internal interviews asking students, alumni, or other stakeholders to explain the value of diversity to their classroom experience in order to illustrate the specific benefits that the institution has derived from diversity.

Example:

Professors at the University of Michigan Law School conducted a study asking graduates how much they had benefited from different elements of the classroom experience. Respondents were asked to rate the value of these factors to their classroom experience on a seven-point scale, where 1 was “none” and 7 was a “great deal.” The study found that as minority student numbers increased, so too did the value placed by whites on diversity.¹¹⁴

- Hold forums where students and faculty can express their thoughts about the institution’s admissions policy and their vision of what constitutes a vibrant, engaging student body.
- Interview selected applicants and/or graduates for their thoughts on diversity and its benefits.
- Ask competitive academic institutions why they value diversity and how it contributes to their educational mission.
- Analyze how prior efforts to attract a diverse student body have had an impact on the institution in terms of competitiveness, stakeholder satisfaction, changes in curricula, etc.
- Keep records of the outcome of all efforts (conclusions are probably more important than detailed minutes of discussions).
- If any part of this process results in an articulation of the goal, or its value to the institution, that should be recorded and made public.
- Ask larger neighboring institutions for their research identifying benefits of diversity (this may be useful for small schools unable to fund new studies regarding diversity).
- Conduct an anonymous survey of students and alumni to demonstrate that minorities and other underrepresented students are successful in school and in their professional careers regardless of their grades or test scores.

Possible Anonymous Survey Questions Focusing on Academic and Professional Success

Ask alumni:

- What is your current profession?
- What is your income range?
- What are your contributions to your undergraduate and/or graduate institutions?
- What are your contributions to your community?

Ask students:

- What is your major?
- What is your grade point average and how has it changed?
- What are your contributions to your school?
- What are your contributions to the community?

2. External References

The following list of resources may serve as helpful evidence for an institution aiming to support its assertion that diversity is desirable and beneficial.

Educational Benefits:

- Brief of *Amici Curiae* American Council on Education, et al., at 22-25, *Gratz v. Bollinger*, 123 S. Ct. 2411 (2003) (No. 02-516), available at http://www.umich.edu/~urel/admissions/legal/gra_amicus-ussc/um/ACE-gra.pdf (discussing in detail the research findings that confirm the educational value of racial and ethnic diversity).
- Brief for the American Educational Research Ass'n et al. as *Amici Curiae* in *Gratz v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-516), available at http://www.umich.edu/~urel/admissions/legal/gra_amicus-ussc/um/AERA-gra.pdf (discussing research studies showing that student body diversity promotes learning outcomes, democratic values and civil engagement, and preparation for a diverse society and workforce).
- Anthony Lising Antonio and Kenji Hakuta, *The Effects of Racial Diversity on Cognitive Complexity in College Students* (2003), available at <http://www.stanford.edu/group/diversity> (finding that a diverse academic community stimulates critical, reflective, and complex thinking, thereby enhancing students' problem-solving abilities).
- Association of American Universities, *AAU Diversity Statement on the Importance of Diversity in University Admissions* (by presidents of its 62 member institutions), Apr.

14, 1997, available at <http://www.aau.edu/issues/Diversity4.14.97.html> (observing that different kinds of diversity, including racial diversity, best create circumstances for the learning required in the 21st century and that schools should therefore try to obtain that diversity).

- Association of American Universities, *Diversity Works: The Emerging Picture of How Students Benefit* 78 (1997) (racial diversity has positive effects on retention, overall college satisfaction, college GPA, and intellectual and social self-confidence of all students).
- Alexander Astin, *Diversity and Multiculturalism on the Campus: How are Students Affected?*, 25 CHANGE 44 (1993) (campus diversity correlates with widespread beneficial effects on a student's cognitive development).
- WILLIAM G. BOWEN AND DEREK BOK, THE SHAPE OF THE RIVER: LONG TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS (1998) (providing statistical analysis that affirmative action works).
- J. H. Braddock & J.M. McPartland, *The Social and Academic Consequences of School Desegregation*, in EQUITY AND CHOICE 5 (Feb. 1988) (overview of research evidence showing that racially diverse schools are positively related to better race relations, increased academic achievement, integration in future employment, and more).
- Brief of *Amici Curiae* Committee of Concerned Black Graduates of ABA Accredited Law Schools, et al., *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/BLSG-gru.pdf (diversity affects the substantive content of issues addressed in a classroom and facilitates active learning).
- COMPELLING INTEREST: EXAMINING THE EVIDENCE ON RACIAL DYNAMICS IN HIGHER EDUCATION (Mitchell Chang, et al. eds., 2003) (presenting empirical data that affirmative action policies are successful).
- Kimberlé Crenshaw, *A Foot in the Closing Door*, 49 UCLA L. Rev. 1343 (2002) (student diversity is linked to both law school curriculum changes and theoretical legal developments).
- Brief of *Amici Curiae* 13,922 Current Law Students at Accredited American Law Schools, at 13-17, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/LSDHE-gru.pdf (diversity is valuable because of the different experiences brought about by students' social experience of race that can be shared in the classroom).
- Edwin C. Darden, et al., *From Desegregation to Diversity: A School District's Self-Assessment Guide on Race, Student Assignment and the Law*, National School Boards

Association Council of Urban Boards of Education (2002), at 4 (educational benefits of diversity, individually or collectively, can be sufficiently compelling to justify the use of limited race-conscious policies; provides a summary of social science research linking diversity to benefits).

- DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION (Gary Orfield & Michal Kurlaender eds., 2001) (collected articles showing that minority enrollment changes and enriches the educational process; includes substantial evidence showing that student body diversity produces “a broader educational experience, both in traditional learning and in preparing for jobs, professions, and effective citizenship in a multiracial democracy”).

Example:

Articles in *Diversity Challenged* include *Diversity and Legal Education: Student Experiences in Leading Law Schools*, by Gary Orfield & Dean Whitla; *The Positive Educational Effects of Racial Diversity on Campus*, by Mitchell J. Chang; and *Faculty Experience with Diversity*, by Roxanne Harvey Gudeman.

In the Orfield and Whitla study, 68 percent of Harvard law students and 73 percent of Michigan law students responded that racial diversity in the classroom enhanced their “think[ing] about problems and solutions in class.”¹¹⁵ Further, nearly two-thirds of all respondents to the survey reported that diversity enhanced the quality of most of their law school classes.¹¹⁶ Over half of the students surveyed at both schools responded that even racial controversies on campus yielded positive educational outcomes, because such events encouraged them to rethink their values.¹¹⁷

Overall, 89 percent of Harvard law students and 91 percent of Michigan law students surveyed indicated that racial diversity in their student body represented a positive aspect of their educational experiences.¹¹⁸ In sum, the study demonstrates empirically that a racially diverse student body enhances the training of future leaders of a multiracial society by preparing them to work together, to debate one another, and even to disagree with each other respectfully.

- Erika Frankenberg, et al., *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*, The Civil Rights Project at Harvard University (Jan. 2003), available at <http://www.civilrightsproject.harvard.edu/research/reseg03/AreWeLosingtheDream.pdf> (students in integrated environments seem to perform better on tests, perhaps through the increased opportunities available to them).
- Patricia Gurin, et al., *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. SOCIAL ISSUES 17 (April 2004).

- Expert Report of Patricia Gurin, *The Compelling Need for Diversity in Higher Education*, Expert Report (Jan. 1999) (study in higher education showing that students who experienced the most racial and ethnic diversity in classroom settings and in informal interactions with peers showed the greatest engagement in active thinking processes, growth in intellectual engagement and motivation, and growth in intellectual and academic skills).
- Patricia Gurin et al., *Diversity in Higher Education: Theory and Impact on Educational Outcomes*, 72 Harv. Educ. Rev. 330 (2002) (underscoring the educational and civic importance of informal interaction among different racial and ethnic groups during the college years).
- Maureen T. Hallinan, *Diversity Effects on Student Outcomes: Social Science Evidence*, 59 OHIO STATE L.J. 733 (1998) (racially diverse classrooms reduce racism and prejudice).
- Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1 (1998) (studies show that achieving critical mass increases the participation of individual minority students).
- Thomas Pettigrew & Linda R. Tropp, *Does Intergroup Contact Reduce Prejudice? Recent Meta-Analytic Findings*, in REDUCING PREJUDICE & DISCRIMINATION (Stuart Oskamp ed., 2000) (harmful societal stereotyping may be ameliorated through contact between students of different racial and ethnic backgrounds).
- R.E. Slavin, *Cooperative Learning and Intergroup Relations*, in HANDBOOK OF RESEARCH ON MULTICULTURAL EDUCATION 628 (1995) (cooperative learning in diverse schools can improve racial attitudes among all students, including increased cross-racial friendships, with effects sustained beyond the learning group).
- N. Sonleitner & P.B. Woods, *The Effect of Childhood Interracial Contact on Adult Antiblack Prejudice*, 20 INT'L J. OF INTERCULTURAL REL. 1 (1996) (students who attended diverse schools had fewer negative racial stereotypes or prejudice, with effects sustained over the long term).
- H. Wechsler and M. Kuo, *Watering Down the Drinks: The Moderating Effect of College Demographics on Alcohol Use of High-Risk Groups*, 93 AM. J. PUBLIC HEALTH 1929 (Nov. 2003) (study finding that binge drinking rates were significantly lower on more diverse college campuses).
- Note, *An Evidentiary Framework for Diversity as a Compelling Interest in Higher Education*, 109 HARV. L. REV. 1357 (1996) (diversity is "one of the most powerful ways of creating the intellectual energy and robustness that lead to greater knowledge").

Military Benefits:

- Brief of *Amici Curiae* Lt. Gen. Julius W. Becton, Jr., et al., at 5, 13-18, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/MilitaryL-both.pdf (“a highly qualified, racially diverse officer corps educated and trained to command our nation’s racially diverse enlisted ranks is essential to the military’s ability to fulfill its principal mission to provide national security.”).
- U.S. Department of Justice, *Review of Federal Affirmative Action Programs*, Report to the President § 7.1 (July 19, 1995) (“[T]he current leadership views complete racial integration as a military necessity—that is, as a prerequisite to a cohesive, and therefore effective, fighting force. In short, success with the challenge of diversity is critical to national security.”).

Professional Benefits—Diversity & Business:

- T. K. Bikson & S. A. Law, *Rand Report on Global Preparedness and Human Resources: College and Corporate Perspectives* (1994) (discusses increasingly global nature of the world economy).
- T. COX, JR., *CULTURAL DIVERSITY IN ORGANIZATIONS: THEORY, RESEARCH, AND PRACTICE* (1993).
- P.L. McLeod, et al., *Ethnic Diversity and Creativity in Small Groups*, 27 *SMALL GROUP RESEARCH* 248 (1996) (members of racially diverse groups are more likely to reach creative solutions to problems than are racially homogenous groups).
- Taylor H. Cox, Jr. & Stacy Blake, *Managing Cultural Diversity: Implications for Organizational Competitiveness*, 5 *ACADEMY OF MANAGEMENT EXECUTIVE* No. 3 (1991) (companies reputable for appropriate management of diversity are proving more successful in attracting and retaining top-quality workers).
- JOHN P. FERNANDEZ, *THE DIVERSITY ADVANTAGE* (1993).
- Brief of *Amici Curiae* General Motors Corporation, at 2, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/GM-both.pdf (“[T]he Nation’s interest in safeguarding the freedom of academic institutions to select racially and ethnically diverse student bodies is indeed compelling: the future of American business, and in some measure, of the American economy depends upon it.”).
- General Motors, *Workplace Diversity – The Competitive Advantage*, available at <http://www.gm.com/company/gmability/diversity/people/workforce.html> (diversity is “good business”).

- Janine S. Hiller & Stephen P. Ferris, *Separating Myth From Reality: An Economic Analysis of Voluntary Affirmative Action Programs*, 23 MEMPHIS ST. U. L. REV. 773 (1993) (observing that it is now commonly accepted in business circles that diversity is “good for business”).
- Robert L. Lattimer, *The Case for Diversity in Global Business, and the Impact of Diversity on Team Performance*, 8 COMPETITIVENESS REV. 3-17 (1998).
- D. Powers & C. Ellison, *Interracial Contact and Black Racial Attitudes: The Contact Hypothesis and Selectivity Bias*, 74 SOC. FORCES 205 (1995) (racial and ethnic diversity promotes concern for the public good, and enhances sensitivity for and understanding of persons of diverse ethnic groups).
- TREVOR WILSON, *DIVERSITY AT WORK: THE BUSINESS CASE FOR EQUITY* (1996) (pursuing a diversity strategy should be part of an organization’s overall human resource and business strategies).
- Jean-Marie Martino, *Diversity: An Imperative For Business Success*, THE CONFERENCE BOARD (1999) (addresses the business rationale behind implementing diversity).
- *Diversity Helps to Deliver Better Business Benefits*, PERSONNEL TODAY, June 18, 2002 (“Four out of five organizations believe there is a direct link between diversity and improved business performance, according to independent research.”).
- *Research Makes a Business Case for Diversity*, FED. HUM. RESOURCES WEEK, Sept. 24, 2001 (“[r]esearch by the National Academy of Public Administration shows that diverse work forces are more productive”).

Professional Benefits—Diversity & Public Health:

- Brief of *Amici Curiae* Association of American Medical Colleges, et al. at 8-10, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/AAMC-gru.doc (minority doctors tend to be more willing to practice in underserved areas, and minority patients are often more comfortable with physicians of their own race).
- Jordan J. Cohen et al., *The Case for Diversity In The Health Care Workforce*, 21 HEALTH AFFAIRS 90 (2002).
- Miriam Komaromy et al., *The Role of Black and Hispanic Physicians in Providing Health Care for Underserved Populations*, 334 NEW ENGLAND J. OF MEDICINE 1305 (1996).
- Earnest Moy & Barbara A. Bartman, *Physician Race and Care of Minority and Medically Indigent Patients*, 273 J. AM. MEDICAL ASS’N 1515 (1995) (minority patients are over

four times more likely to receive care from non-white physician than are Caucasian patients).

- Somnath Saha, et al., *Do Patients Choose Physicians of Their Own Race?*, 19 HEALTH AFF. 76 (2000) (finding that minority patients chose physicians of their own race due to personal preference).
- Lisa Tedesco, *The Role of Diversity in the Training of Health Professionals*, in ENHANCING DIVERSITY IN THE HEALTH PROFESSIONS (Brian D. Smedley et al., eds., 2001) (diversity “provide[s] a unique contribution to learning, discussion, and understanding that is not necessarily attainable elsewhere”).
- Dean K. Whitley et al., *Educational Benefits of Diversity in Medical School, A Survey of Students*, 78 ACADEMIC MED. 460 (2003) (reporting that students surveyed at Harvard and UCSF medical schools “overwhelmingly supported affirmative action in admissions” and “strongly believed that diversity enhanced their educational experiences”).

Professional Benefits—Diversity & the Legal System:

- Brief of *Amicus Curiae* American Bar Association, at 13-17, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/ABA-gru.pdf (racial and ethnic diversity in the legal profession creates a more inclusive legal system, preserves the legitimacy of the legal system, and safeguards the integrity of democratic government).
- Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 CAL. L. REV. 1109 (2003) (benefits of diversity to the judiciary and the legal system).
- Nancy E. Dowd et al., *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL’Y 11 (2003), available at http://www.law.ufl.edu/faculty/pdf/diversity_matters.pdf (in survey of 300 University of Florida College of Law students, nearly 70% agreed or strongly agreed that racial and ethnic diversity “enhances how students think about problems and solutions in class.”).
- Harry T. Edwards, *Race and the Judiciary*, 20 YALE L. & POL’Y REV. 325, 329 (2002) (racial diversity on the bench can enhance judicial decision making by broadening the variety of voices and perspectives in the deliberative process).
- Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 WASH. & LEE L. REV. 405 (2000).
- Lewis A. Kornhauser and Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829, 922-

23, 938-39 (1995) (diversity in the legal profession counters actual and perceived racial and ethnic bias).

- Brief of *Amici Curiae* Law School Admission Council at 2, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/LSAC-gru.pdf (statistical evidence compiled by LSAC shows that unless America's law schools are allowed to adopt race-conscious admissions policies, many of the nation's lawyers will be trained in an environment of racial homogeneity that bears almost no relation to the world in which they will work).
- Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 STAN. L. REV. 1217, 1217 (1992) ("Justice Marshall imparted not only his legal acumen but also his life experiences, constantly pushing and prodding [his colleagues] to respond not only to the persuasiveness of legal argument but also to the power of moral truth.").
- David B. Rottman & Alan J. Tomkins, *Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, *Court Review*, Fall 1999 (study finding that 68 percent of Black citizens view the judicial system as treating Blacks unfavorably as compared to Whites).
- Deborah Weisman, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C. L. REV. 1905, 1906 (2000) (many new citizens are threatened with violations of their constitutional rights as a result of language barriers, and depend upon multilingual representation provided by minority attorneys).
- Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts, *Final Report 2* (1989) (a substantial number of citizens and lawyers believe that bias affects justice).
- *Miles to Go 2000: Progress of Minorities in the Legal Profession*, American Bar Association Commission on Opportunities for Minorities in the Profession, 3-5 (2000) (diversity in the profession would increase the number of attorneys willing to represent underprivileged individuals and groups, since graduating minority lawyers work in the public interest at a much higher rate than white graduates).

B. Considering Alternative Admissions Policies

Once an educational institution has identified diversity as one of its institutional goals, it needs to develop a plan to achieve that goal. University leaders should consider the various options, and choose the one that best suits their institution. Many schools have tried to improve their diversity in many different ways. A school should take advantage of this range of experience, and its own, in designing its admissions policy.

As discussed in Chapter II, part of “narrowly tailoring” an admissions policy to the goal of racial diversity is a serious and good faith consideration of workable “race-neutral” alternatives that will effectively further diversity. An institution should design an admissions program that achieves its goals. Of course, the program should also pass constitutional muster and be cost-effective. As a result, it makes sense to look at all of the alternatives—including alternatives that do not consider the race or ethnicity of an applicant. As an institution considers these options, it should document the decision-making process. This will ensure that the institution designs an effective policy, explains the policy to constituents, minimizes any duplication of efforts when it later evaluates the policy, and justifies the policy if it is subject to challenge.

To date, the Supreme Court has not identified any race-neutral alternative that effectively achieves the goal of diversity. Nonetheless, it is important that an institution undertake a good faith evaluation of race-neutral options. It is not, however, required to exhaust every possible nonracial means of increasing diversity. Nor must it implement a race-neutral program that might fail to meet its diversity objectives, simply to prove compliance. The Supreme Court allowed educational institutions ample discretion to make these decisions. An institution’s first priority should be to ensure that the admissions policy it designs is workable and achieves the institution’s diversity goals. As that process of selection and design unfolds, an institution should document what has been considered and preserve the bases for its decisions.

In *Grutter*, the Supreme Court Referenced Prior Research Indicating That the Following “Race-Neutral” Alternatives May Not Work:¹¹⁹

- X Adopting “percent plans.”**
- X Relying solely on race-neutral factors such as test scores, geography, or economics.**
- X Forgoing reliance on grades and test scores.**
- X Using a lottery system.**

There are a number of studies that have concluded that race-neutral alternatives do not adequately address the need for racial and ethnic diversity. (See Appendix 4.) These studies offer a good start to begin evaluating alternative race-neutral plans, but a school should gather information about the effect of these alternatives on that particular institution’s student body diversity. Thus, a good faith evaluation includes documentation that the institution looked at the results of other policies as applied to its specific applicant pool.

1. Useful Internal Documentation

This section provides some general guidelines for evaluating alternative policies and documenting a good faith consideration of other options, including race-neutral options. The following suggestions are not comprehensive, and schools are encouraged to explore additional ways to document their consideration of alternative policies. Moreover, schools need not exhaust these suggestions to be within constitutional bounds.

- **Meet with Admissions Officials:** Institutions should discuss and evaluate the effectiveness of various alternative policies to achieve diversity, including a consideration of race-neutral policies. Any conclusions resulting from this effort should be recorded along with the bases for them.
- **Conduct focus groups or establish an Admissions Policy Committee:** These groups could be composed of various institutional stakeholders (such as administrators, faculty, contributors, supporters, alumni, students, and potential applicants). They would be asked to consider seriously the alternatives and recommend workable methods to achieve the goals of the institution, including diversity. Again, the results of these efforts should be recorded and maintained.
- **Conduct a review of various studies regarding the effectiveness or ineffectiveness of race-neutral alternatives:** Schools should generate a report analyzing and referencing some of the studies and research currently available. It is wise to make the report public and submit it to a policy-making committee for review.
- **Conduct simulations or apply alternative admissions policies to a known applicant pool:** Some admissions policies can be applied retroactively or prospectively to an institution's applicant pool based on information already gathered through the existing application process. For example, a lottery system could be applied to all applications received and the impact on class diversity could then be analyzed. A similar simulation could be run using only a percent plan, standardized testing, or geographic factors. If the racial background of the applicants in the pool is known, the results of such experiments would indicate whether these "race-neutral" alternatives would achieve the institution's goal of diversity.

Examples:

Amherst College found that elimination of the Harvard College approach at highly selective institutions would have a drastic resegregating impact: Black enrollment would likely be reduced by between 50 and 70 percent.¹²⁰

Boalt Hall School of Law, UC Berkeley, experimented with admitting more low-income students, but abandoned that experiment after one year, concluding that it could not produce racial diversity.¹²¹

- **Review the experience of other schools employing alternative policies:** Some institutions have the ability to compare diversity under an admissions policy that considered race with diversity under a policy that did not. In reviewing these results, an institution should document how these “test case” schools compare in terms of applicant pool, student body, historical diversity, and other factors.

Example:

The director of admissions at UC Berkeley from 1993-1999 reviewed the changes in Berkeley admissions prompted by Proposition 209’s ban on affirmative action. He described the dramatic drop in African American, Latino, and Native American enrollments and concluded, “I know from years of experience that, in deciding among college applicants, admissions officers find that the complexity of demographics makes it impossible to use a surrogate for race.”¹²²

Example:

In their *amici curiae* brief in *Grutter*, the American Educational Research Association, the Association of American Colleges and Universities, and the American Association for Higher Education found that ending race-conscious admissions resegregated leading California and Texas law schools:

“From 1993-96, when race-conscious admissions were in place, African Americans were, on average, 6.2% of the first-year law students enrolled at the University of Texas; from 1997-2001, when race-neutral admissions were in place, African Americans were only 2.2% of the first-year students. For the same years, similar declines in African American enrollments occurred at the University of California, Berkeley (Boalt Hall) and UCLA: Boalt Hall enrollments dropped from 8.7% to 2.7%; UCLA enrollments declined from 8.4% to 2.3%. . . . The declines in Latino first-year law school enrollments are comparable. From 1993-96, Latinos were, on average, 11.1% of the first-year law students enrolled at the University of Texas; from 1997-2001, they were only 8.3% of the first-year students. For the same periods, Boalt Hall Latino first-year enrollments dropped from 13.2% to 6.4%; UCLA Latino first-year enrollments dropped from 14.4% to 8.2%.”¹²³

Useful documentation would draw comparisons and make predictions about the prospects of race-neutral alternatives at the host institution based upon numerous statistics and studies.

- **Collect data on the number of applications received from minority students; compare with the racial composition of the relevant population (e.g., the state or local community):** This documentation would serve as evidence that the institution draws few applications from minority students relative to or because of the institution’s locale, and therefore special efforts must be made to attract minority students.

Example:

Colleges such as Bowdoin, Bates, Colby, and Carleton have faced great difficulty in obtaining a class with more than token numbers of African American or Latino students without making special efforts to attract such applicants. This problem is particularly challenging for institutions that are located far from urban areas or in states with low minority populations.¹²⁴

2. External References

Reliance on external research is particularly useful when considering alternative admissions policies. The impracticality of testing admissions alternatives at any given school supports the conclusion that institutions should be allowed to look to public research and the experiences of other schools in evaluating policies. Institutions cannot afford to implement admissions policies that undermine the educational mission simply to prove a point. Though a school should perform some level of institution-specific analysis, it can, and should refer to the numerous sources of data that are readily available from experts, academics, and other institutions on the effectiveness of various admissions policies. These are valuable resources for any institution beginning to engage in a search for workable admissions policies that promote diversity.

- Brief of *Amici Curiae* Amherst, et al. at 3, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (Nos. 02-241 & 02-516), available at http://www.umich.edu/~urel/admissions/legal/gr_a_micus-ussc/um/Amherst-both.pdf (“research and experience suggests that for small, highly selective, largely private colleges . . . carving out race from all the other kinds of diversity that colleges consciously aim for will have a predictable, substantial resegregating effect, probably moving black students from roughly 5-7% of the student body to 2% or so.”).
- Lee C. Bollinger, *A Comment on Grutter and Gratz v. Bollinger*, 103 COLUM. L. REV. 1589 (2003).
- WILLIAM G. BOWEN AND DEREK BOK, *THE SHAPE OF THE RIVER: LONG TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998) (finding that the effect of strict color-blind admissions would be to reduce the rate of undergraduate admissions for African Americans at five selective institutions from 42 percent of those applying to 13 percent).
- Jordan J. Cohen, *The Consequences of Premature Abandonment of Affirmative Action in Medical School Admissions*, 289 J. AM. MEDICAL ASS’N 1142 (2003) (concluding there is “simply no alternative to the use of race-conscious decision making in medical school admission if our society is to have the benefit of a reasonably diverse physician work force.”).

- Expert Reports in *Grutter v. Bollinger*, reprinted in 12 BERKELEY LA RAZA L.J. at 373, 377, 387, 399 (2001) (discussing the issue of racial and ethnic bias on the LSAT and SAT).
- ANDREA GUERRERO, SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION (2002).
- Herma Hill Kay, *The Challenge to Diversity in Legal Education*, 34 IND. L. REV. 55 (2000) (former dean describing decline in diversity despite race-neutral experimentation).
- William C. Kidder, *Portia Denied: Unmasking Gender Bias on the LSAT and Its Relationship to Racial Diversity in Legal Education*, 12 YALE J.L. & FEMINISM 1 (2000) (finding that the discriminatory impact of reliance on test scores is not limited to race; women are not well represented at the very top levels of LSAT scores).
- William C. Kidder, *The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950-2000*, 19 HARV. BLACKLETTER L.J. 1 (2003) (describing consequences of banning affirmative action in California, Texas, and Washington public law schools).
- Law School Admission Council, National Decision Profiles, 2001-02 (For the fall 2002 entering class, there were a total of 4,461 law school applicants who had both LSAT scores of 165 or above and UGPA of 3.5 or above. Of that number, a total of 29 were Black and only 114 were Chicano/Latino).
- Richard O. Lempert, et al., *Michigan's Minority Graduates in Practice: The River Runs Through the Law School*, 25 LAW & SOCIAL INQUIRY 395, 412-15 (2000) (finding that Michigan's minority alumni who entered law school with lower LSAT scores and GPAs than those of white alumni were as successful as the white alumni in the legal profession).
- Deborah C. Malamud, *Assessing Class-Based Affirmative Action*, 47 J. LEGAL EDUC. 452, 465 (1997) (the vast majority of people who are economically disadvantaged are white, meaning that poverty-based affirmative action primarily benefits white applicants by simple force of numbers).
- Filomeno Maldonado, *Rethinking the Admissions Process: Evaluation Techniques that Promote Inclusiveness in Admissions Decisions*, in ENHANCING DIVERSITY IN HEALTH PROFESSIONS (Brian D. Smedley, et al. eds., 2001).
- Rachel Moran, *Diversity and its Discontents: The End of Affirmative Action at Boalt Hall*, 88 Cal. L. Rev. 2241 (2000).
- Brief of Amici Curiae National Center for Fair & Open Testing (FairTest) at 4, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/FairTest-gru.pdf (standardized tests are

replete with elements of well-documented bias and errors of measurement, thus they are not a neutral, accurate, and sufficient measure of an applicant's merit).

- Expert Report of Jay Rosner in *Grutter v. Bollinger*, reprinted in 12 BERKELEY LA RAZA L.J. 377 (2001) (unequal access to test preparation courses is a significant bias against students of color).
- Michael Selmi, *Testing for Equality: Merit, Efficiency, and the Affirmative Action Debate*, 42 UCLA L. REV. 1251 (1995).
- Expert Report of Claude M. Steele in *Grutter v. Bollinger*, reprinted in 5 MICH. J. RACE & L. 439 (1999) (stereotype threat describes the phenomenon whereby academically successful minority students—who are most aware of and most sensitive to the negative stereotypes about minority students' "inferior" average performance on standardized tests, and are most anxious to avoid confirming the negative stereotype that their racial or ethnic group(s) possess less intellectual ability on such tests—succumb to that anxiety and perform below their ability resulting in artificially depressed test scores).
- Gerald Torres, *Grutter v. Bollinger/Gratz v. Bollinger: View from a Limestone Ledge*, 103 COLUM. L. REV. 1596 (2003) (describing resegregation at University of Texas Law School).
- Linda F. Wightman, *The Consequences of Race-Blindness: Revisiting Prediction Models With Current Law School Data*, 53 J. LEGAL EDUC. 229 (2003).
- 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, 42 (1997) (finding that the elimination of race as a factor in law school admissions would cause the representation of African American students at the 89 most selective law schools to fall from approximately 7 percent to less than 1 percent. Three quarters of the African American students who are currently admitted to accredited law schools would not be accepted anywhere, and 40 percent of those still admitted would be admitted only to schools with predominantly minority student populations).
- Brief of *Amici Curiae* Harvard Black Law Students Association, et al., at 28, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241)), reprinted in 19 HARV. BLACKLETTER L.J. 55 (2003).
- Expert Report of Stephanie M. Wildman in *Grutter v. Bollinger*, reprinted in 12 BERKELEY LA RAZA L.J. 429 (2001) (the SAT and LSAT in fact measure race, bias, and the history of racial discrimination in education).

C. Designing a Flexible Plan That Promotes Diversity

An institution must select or create an admissions plan that achieves its goals. Because an institution's goals are complex, an institution should carefully design an admissions process that is flexible enough to look at many facets of individual applicants. (See Chapter II.) The task may be daunting, but the endeavor is crucial to the success of the institution's admissions plan. The plan should result in the selection of a group of students who will further the educational mission of the school. This will require a plan that allows for review of applicants based on factors such as life experience, character, and potential.

Under *Grutter*, when race is used in the admissions process, institutions must review each application in a holistic, individualized, and nonmechanical manner. In operation, institutions are not expected to document the actual evaluation of each and every application each year. However, institutions should document the planning, design, and framework for the process.

An institution's flexible race-conscious admissions policy should result in a process that can be explained to the individuals reviewing the applications and making the admissions decisions, as well as to those applying to an institution or program. The process of designing the policy, as well as the procedures for implementing it, should be well documented. A school will not reach its goal of diversity if it cannot articulate the process for achieving it.

Example:

The former director of admissions at the University of Michigan Law School describes the origins and development of the Admissions Policy Statement at issue in *Grutter v. Bollinger*, as well as other features of Michigan Law School's flexible, race-conscious program, in a recent law review article, *A View From the Files: Law School Admissions and Affirmative Action*.¹²⁵

1. Useful Internal Documentation

a. Document the Process of Designing the Plan

As explained above, an institution should consider alternatives and design an admissions policy that works. The policy must then result in a concrete plan for administering the admissions program. The process that any institution undertakes to design or select that plan should be documented.

First, an institution should define the process used to design the plan. That could involve use of an existing committee or creation of a new one. Outside consultants may be utilized. Data may be collected from the institution's stakeholders. Each institution must devise its own process for designing an admissions plan. Regardless of the process employed,

however, an institution should record the decisions that contributed to the design of the plan and the justifications for those decisions.

- **Examine the mission statement** to ensure that it outlines the institution’s goals, expresses its commitment to diversity, and summarizes the institution’s core admissions criteria. Goals should be kept broad and stated generally.

Examples:

Law School Deans from Georgetown Law School, Duke Law School, University of Pennsylvania Law School, Yale Law School, Columbia Law School, University of Chicago Law School, New York University Law School, Stanford Law School, Cornell Law School, and Northwestern University School of Law are “committed to educating students, who beyond their intellectual power and proven academic skills, will bring values, beliefs, knowledge, and perspectives that will enliven and enrich the learning experience for all.”¹²⁶

The Massachusetts Institute of Technology’s mission statement desires “intellectual stimulation of a diverse campus community.”¹²⁷ MIT seeks to identify individuals with creative talent and high motivation, whose achievements indicate that they not only will succeed at MIT, but also will contribute to the educational experience of all students at MIT and will likely contribute to the betterment of humankind in their careers.¹²⁸

The Law School Admission Council suggests that “a sound admission program is more than an exercise in assessing an applicant’s cognitive skills and predicting first year performance. Its goal is much broader—assembling a class of individuals who contribute to each other’s learning experiences, and who possess talents and skills that will contribute to the profession.”¹²⁹

- **Examine the admissions policy statement** to ensure that it describes the goals and objectives of the admissions policy. Update it if necessary. It should also be tied directly to the mission statement and should discuss the institution’s diversity rationale focusing on multiple factors, not just race.

Example:

The University of Michigan Law School’s admissions policy states that it seeks “a mix of students with varying backgrounds and experiences who will respect and learn from each other.”¹³⁰

The revised University of Michigan Undergraduate Admissions Policy states: “As a public university, we also have an important and distinctive role to provide access to students from all walks of life.”¹³¹

b. Create an Admissions Process

Diversity is an integral part of any strong educational mission, but it is not everything. An admissions plan must pursue many goals. To do that effectively, the admissions decision should depend upon an evaluation of the applicant as an entire person. The admissions process should therefore facilitate individualized, nonmechanical review and solicit a broad range of information on which decisions can be made.

- **Develop a process that takes into account several factors** and allows the reviewers to consider all of these factors in conjunction, without giving undue weight to any particular factor. The factors all reflect contributions that the applicant can make to the student body. As such, they do not conflict, but complement each other, thus revealing the strongest overall candidates for admission. Such factors may include:
 1. Academic Factors:
 - advanced work or degrees
 - undergraduate major
 - difficulty of college course work
 - grade trends
 - quality of high school and prior academic experience
 - other test scores
 2. Demographic and Diversity Factors:
 - age
 - gender
 - race/ethnicity
 - geographic residence
 - socioeconomic status
 - family size
 - religion
 - multicultural experiences
 - growing up in a low-income community
 - family history of higher education (i.e., first generation to attend college)
 - immigration history
 - dominant language and other languages
 - parents' and grandparents' education level
 - number of hours worked and other responsibilities during school
 3. Work Experience:
 - position/type
 - level of responsibility achieved
 - full-time/part-time
 - number of years worked
 - type of industry or business

- law-related experience or knowledge
 - military service
4. Leadership and Extracurricular Factors:
 - undergraduate or graduate leadership activities
 - community leadership/accomplishments
 - volunteer activities
 - academic leadership and organizations
 - athletic activities
 - travel/foreign living
 - service activities
 5. Accomplishments:
 - special skills and talents
 - music/drama/writing/artistic ability
 - overcoming/persevering in face of adversity
 - significant personal accomplishments of any kind
 - overcoming substantial discrimination
 - helping in overcoming discrimination against others
 - serving underserved communities or peoples
 6. Evidence Supporting Character and Fitness (Personal Qualities):
 - integrity
 - maturity
 - honesty
 - compassion
 - judgment
 - motivation
 - perseverance/tenacity
 - unique perspectives
 7. Skills and Abilities:
 - communication skills
 - planning ability
 - analytical skills
 - advocacy skills
 - problem-solving skills
 - writing skills

For additional examples of factors that may be considered in addition to an applicant's courses, grades, and test scores, see Chapter II.B.2.b.

- **Create an admissions application** that gives applicants an opportunity to provide relevant information that will help an institution achieve its diversity goals by asking about gender, race and ethnicity, age, spoken languages, socioeconomic status, hometown, and highest level of parents' education, among other qualities and characteristics.
- **Develop open-ended essay questions** that will allow applicants to distinguish themselves from other applicants.

Examples of open-ended essay questions:

How do you stand out from other candidates?

How can you contribute to the diversity of the student body on campus?

What challenges have you faced or overcome in your life?

This general approach should be documented for the benefit of the reviewers and any stakeholders examining the admissions plan. The thought process of reviewers in implementing the approach, however, will be difficult to record. The Supreme Court did not indicate that institutions are expected to preserve evidence of how each individual admissions decision was made.

c. Track Progress During the Admissions Process

Admissions officers should determine whether an institution is meeting its goals, including its goal of diversity. As such, officers should look at the data on incoming students to determine whether the admissions plan is contributing to a diverse student body.

- **Maintain an Admissions Profile or Report.** As the admissions cycle progresses, the admissions committee should:
 - Keep a profile of offers and acceptances to date and the evolving make-up of the class;
 - Document meetings during which it reviews a representative sample of the files of students who have been admitted with lower grades and/or test scores; and
 - Meet and document any cases that present novel issues or raise general policy questions.
- **Maintain Data on the Success of Enrolled Students.** After students are admitted, institutions should track their progress. This data will allow the institution to determine whether diversity has enhanced other educational goals. An institution should:

- Create an anonymous database to store the test scores, grades, activities, and community service of all students who were admitted with lower grades and/or test scores;
- Create a database to track the progress of each student, including retention and graduation rates; and
- Hold committee meetings to review general reports on students' academic progress, as well as other indications of success.

These types of reports also can be useful to show that grades and test scores are not the only predictors of students' success in school. They will also help to further refine the selection process.

Avoid anything in the admissions plan giving the false impression that there is:

- A prescribed floor for the number of qualified minority students
- A fixed number of seats set aside for minority applicants alone
- A predominance of race factors over other factors
- A separate admissions track for minority students
- Assignment of point values or other numeric values for race

- **Work toward obtaining a "critical mass" or goal.** This should be a flexible concept and the percentages for different groups should be expected to change over time. Collect data on the annual enrollments of underrepresented minorities at the institution. Compare the data from one year to the next. If the range fluctuates, this is evidence that the goal of creating a "critical mass" of minorities in the student body is flexible and is not a "quota."
- **Collect data demonstrating that the admissions plan uses a goal or target as opposed to a fixed number.** An institution that successfully strives for diversity may (partially as a result of chance) find that it admits minority applicants in consistent numbers from year to year. In order to explain to stakeholders that this consistency does not reflect a fixed number of seats set aside for minority applicants, an institution should collect similar data on other characteristics. For example, the number of students admitted to Harvard from the state of Ohio may be consistent over time, but that is not an indication Harvard has a quota for Ohio residents.

Example:

Recent data on the University of Michigan Law School's enrollments of underrepresented minorities showed that "critical mass" is far from being a fixed quota. As the district court found in *Grutter*, underrepresented minority graduates ranged from a low of 5.4 percent (1998) to a high of 19.2 percent (1994).¹³²

Consistency in enrollment of students sharing any characteristic may represent nothing more than probability. For example, at Harvard College, the number of admitted students whose fathers did not attend college has ranged from 220 to 228—or from a low of 10.6 percent of admitted students to a high of 11.0 percent, a variation of approximately 3.8 percent.¹³³ For the same academic years, the percentage of African American students among the admitted applicants was as low as 8.76 percent and as high as 9.92 percent— approximately a 13 percent variation.¹³⁴ Comparing these two sets of data helps to explain that some degree of consistency in racial or ethnic enrollment does not indicate that the admissions process is employing a quota. Rather, even characteristics that were not given any additional weight may appear within a smaller range of variation than race or ethnicity.

2. External References

Examples of Constitutionally-Approved Admissions Policies:

- University of Michigan Law School Admissions Policy, *available at* <http://www.law.umich.edu/newsandinfo/lawsuit/index.htm>.
- Harvard College Undergraduate Admissions Policy.¹³⁵

Support for Critical Mass Concept:

- Brief of *Amici Curiae* American Educational Research Association, the Association of American Colleges and Universities, and the American Association for Higher Education, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), *available at* http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um.html.
- Roxanne Harvey Gudeman, *Faculty Experience with Diversity: A Case Study of Macalester College*, in *DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION* 251, 267-68 (Gary Orfield & Michal Kurlaender eds., 2001).
- Brief of *Amici Curiae* Harvard University, et al., *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241) and *Gratz v. Bollinger*, 123 S. Ct. 2411 (2003) (No. 02-516), *available at* http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um.html.

- Rachel F. Moran, et al., *Statement of Faculty Policy Governing Admission to Boalt Hall and Report of the Admissions Policy Task Force* (1993).

Support for a Limited Consideration of Grades and Test Scores:

- Asian Law Caucus et al., *Facts and Fantasies about UC Berkeley Admissions: A Critical Evaluation of Regent John Moores' Report 22-27* (Oct. 2003), available at <http://www.equaljusticesociety.org/research.html>.
- David L. Chambers, et al., *Doing Well and Doing Good* (2003), available at <http://www.umich.edu/newsandinfo/lawsuit/survey.htm>.
- Brief of *Amicus Curiae* Clinical Legal Education Association, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (No. 02-241), available at http://www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um.html.
- William C. Kidder & Jay Rosner, *How the SAT Creates 'Built-In Headwinds': An Educational and Legal Analysis of Disparate Impact*, 43 SANTA CLARA L. REV. 131 (2002).
- Law School Admission Council, *New Models to Assure Diversity, Fairness, and Appropriate Test Use in Law School Admissions* 3 (Dec. 1999).
- NATIONAL RESEARCH COUNCIL ET AL., *MYTHS AND TRADEOFFS: THE ROLE OF TESTS IN UNDERGRADUATE ADMISSIONS* (Alexandra Beatty & M.R.C. Greenwood, eds., 1999).
- Expert Report of Jay Rosner in *Grutter v. Bollinger*, reprinted in 12 BERKELEY LA RAZA L.J. 377 (2001).
- Society of American Law Teachers, *SALT on the LSAT* (Dec. 2003), available at <http://www.saltlaw.org/StatementLSATBrochure.pdf>.
- Expert Report of Claude M. Steele in *Grutter v. Bollinger* and *Gratz v. Bollinger*, reprinted in 5 MICH. J. RACE & L. 439 (1999).
- U.S. DEPT OF EDUCATION OFFICE FOR CIVIL RIGHTS, *THE USE OF TESTS AS PART OF HIGH-STAKES DECISION-MAKING FOR STUDENTS* (Final version Dec. 2000).
- Expert Report of David M. White in *Grutter v. Bollinger*, reprinted in 12 BERKELEY LA RAZA L.J. 399 (2001).

D. Showing that the Policy Achieves Diversity Goals

Once an admissions plan has been adopted, it should be evaluated for its efficacy in achieving both diversity and the benefits of diversity. First, a school should periodically examine whether its admissions policy is actually achieving its diversity goals. That may require examining the policy, the student bodies resulting from that policy, and the definition

of diversity itself. Race and ethnicity are complex, dynamic concepts in our society, and an admissions policy can become outdated. Moreover, the definition of the goals may change: the society that an institution seeks to serve will transform itself over time. As a result, previously underrepresented groups may no longer be underrepresented at the school, while new groups may emerge that the original policy never considered. The process described in Section C, above, should be an ongoing function of the institution.

Second, an institution should evaluate how well it has attained the benefits that flow from diversity. General social science evidence and testimonial evidence demonstrating the benefits that flow from student body diversity are one element of any periodic evaluation. In addition, an institution should be able to support its policy with evidence drawn from studies of its own specific admissions process that show a sufficient linkage between the policy and any diversity benefits actually achieved.

1. Useful Internal Documentation

- Survey the administration, admissions office personnel, faculty, students, or alumni to define the benefits that the institution hopes to achieve through attracting and maintaining a diverse student body.
- Evaluate national, regional, and local demographics to help define diversity.
- Ask students, alumni, and other stakeholders whether diversity continues to contribute to their environments and perspectives.
- Survey or gather other testimonial evidence from members of the student body regarding the educational benefits that flow from a diverse class.

Example:

The University of Michigan's ongoing research study of its own admissions policy and how it achieves diversity tracks more than 2,000 students over their four years of college to assess how experiences with diversity on campus impact their development.¹³⁶ The study focused on campus diversity in four areas: (1) student backgrounds, expectations, and experiences at Michigan; (2) personal and ideological orientations to diversity; (3) student experiences with diversity; and (4) overall reaction to campus diversity at Michigan.¹³⁷

2. External References

The following list of resources may be helpful to an institution seeking to establish a link between its race-conscious admissions policy and the educational benefits that flow from student body diversity:

- Nancy E. Dowd et al., *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 11 (2003), available at http://www.law.ufl.edu/faculty/pdf/diversity_matters.pdf.
- Patricia Gurin, et al., *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. SOCIAL ISSUES 17 (Apr. 2004).
- Patricia Gurin, et al., *Diversity in Higher Education: Theory and Impact on Educational Outcomes*, 72 HARV. ED. REV. 330 (2002).
- Elizabeth Mertz, et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1 (1998).

E. Periodic Review

Any sound admissions policy should also include provisions authorizing periodic review, including whether consideration of race is still necessary to achieve student body diversity. In other words, an institution should review its policy on a regular basis and decide whether a diverse student body could be achieved without the use of a race-conscious policy. This review is necessarily institution-specific and may involve an annual estimate of the racial composition of the student body under a hypothetical policy that does not take race into account. Institutions should also determine whether other institutions have successfully adopted race-neutral policies that achieve a high level of diversity. If so, admissions officers should evaluate the race-neutral program to see if it can be successfully implemented at their school and still meet their admissions and diversity goals.

Example:

The University of Michigan estimated the racial composition of its 1998 incoming College of Literature, Sciences & Arts class under a hypothetical policy that did not take race into account as an admissions factor. The resulting report concluded that, "A decision to eliminate underrepresented minority status as a factor in admissions would substantially reduce the proportion of students from underrepresented ethnic minority background."¹³⁸