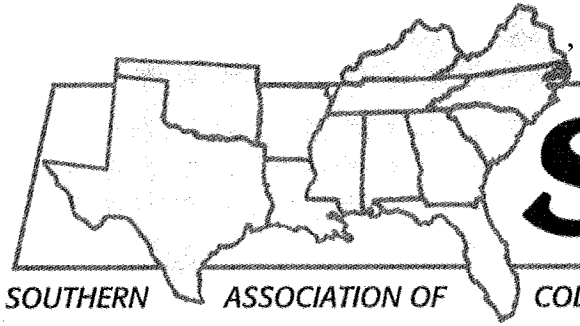
Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Oklahoma
South Carolina
Tennessee
Texas
Virginia



SACRAO

SOUTHERN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS

NEWSLETTER

September 2003
Volume XXVI, Number II

From the Beginning: College Admissions and The Michigan Cases

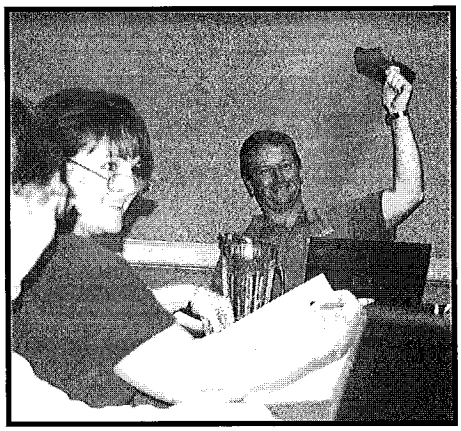
By Gary M. Lavergne
Director of Admissions Research,
The University of Texas at Austin

It is a popular misconception that Supreme Court rulings settle disputes. Just as often, debate begins *after* a case has been adjudicated. For example, as historic as *Brown v Board of Education* (1954) was to the quest for equal educational opportunities for all Americans, meaningful debate over school desegregation did not begin until *after* the ruling, and real change did not happen until the passage of the Civil Rights Act of 1964 and other Great Society legislation—and the dispatch of federal marshals. For school desegregation, *Brown* was the beginning of the beginning.

The recent *Gratz* and *Grutter* cases involving the University of Michigan's Undergraduate and Law Schools are not likely to plunge colleges and universities into the melodramatic social upheavals school desegregation brought about in the late '60s and early '70s. But we are in for a great deal of wrenching debate over what the *Weekly Standard* called "Supreme Confusion."

In general, the Court affirmed the *Bakke* (1978) decision, which allowed for the consideration of race in admissions as long as that consideration did not extend to quotas. But in her majority opinion in *Grutter,* Justice Sandra Day O'Connor took the "no quota" idea to a new level. An acceptable "narrowly-tailored" plan that takes race into consideration while not violating the Equal Protection Clause of the Constitution is one that: 1) does not "insulate" categories of applicants from competition with all others; 2) does not give a predetermined bonus to any group; 3) is flexible enough to consider elements of diversity other than race; 4) produces an admitted class in which everyone is qualified; and 5) includes a highly individualized, holistic review of each applicant so that it is possible for non-minorities to benefit and minorities to be penalized.

Justice O'Connor is the key to understanding all of this. As the only Justice joining the majority in both cases, her opinion in *Grutter* and concurrent opinion in *Gratz* provide us with what little direction enrollment managers can harvest from the Court. Our lawyers will undoubtedly bicker over what all of this really means, but this layman's interpretation is that if an institution intends to take race into consideration in its admissions process, then numbers are bad—not just explicit quotas. Numbers, such as Michigan's 20-point award for race, constitute a "mechanical" process that offended Justice O'Connor.



But admissions officers face an additional dilemma. Are we allowed to evaluate or model an admissions policy proposal for the purpose of determining whether that policy will increase diversity to a desired or even an acceptable level? Suppose, for example, three proposed policy changes are modeled and each produces differing increases in diversity. Will choosing a desired diversity level from the three scenarios constitute the setting of a quota? This is not paranoia. Much of the debate over Michigan's "+20" centered over whether that institution knew, in advance, the likely results of their policy and whether it was designed to "produce" a certain level of diversity. Thus, some said, their policy was a proxy for a quota.

Incredibly, enrollment planners in institutions wishing to engage in affirmative action may have had mathematics taken away from them as a planning tool. Is it best to *not know* the consequences of a policy that takes race into consideration? The lawyers will fight over that one!

Then, there is the question of the educational benefits resulting from diversity that make consideration of race a compelling interest. It was the only justification Michigan used for its race-conscious admissions routine. In Texas, for example, we continue to look forward to the day our student body more closely resembles the splendid diversity of our state. But in *Grutter* Justice O'Connor wrote, "For Justice Powell, '[i]t is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups,' that can justify the use of race." Does that mean that we can continue to aspire to "look" like all of Texas—we just can't use it as an excuse to engage in affirmative action? The lawyers will fight over that one, too!

Of course, there are many more issues that can never be fully addressed here. Suffice it to say that, like *Brown,* this is the beginning of the beginning. Hardcore advocates of affirmative action will not likely be satisfied with whatever happens, and opponents will likely take institutions to court over allegations of illegal quotas and assertions of non-existent educational benefits justifying affirmative action. But take heart, it is quite possible that the most important message to the political world is the affirmation of Justice Powell's assertion in *Bakke* that higher education occupies a "special niche" in constitutional tradition. The Court itself deferred to the educational judgment of Michigan's Law School and stated unambiguously that the good faith of institutions are to be presumed, absent "a showing to the contrary." I'll take that.