

THUMB ON THE SCALE

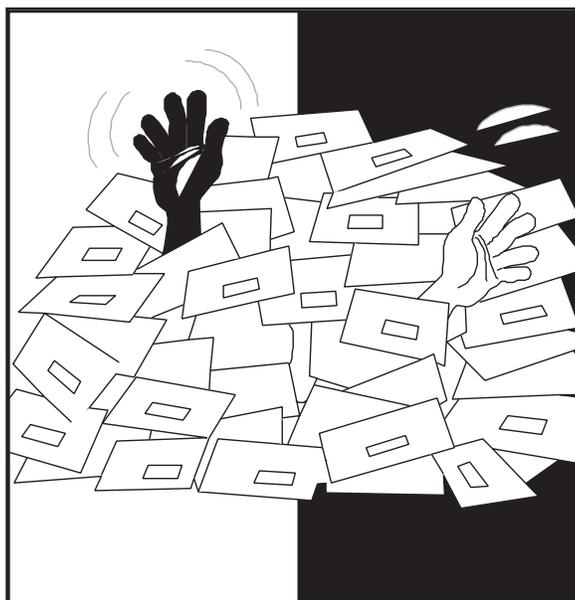
THE TRUTH ABOUT RACE PREFERENCES AT UW

FREDERIC MOHS

There is both anxiety and frustration surrounding the racial make-up of the UW-Madison student body. UW-Madison Chancellor John Wiley has said, "We simply don't have enough people who are non-white on this campus to achieve the kind of day-to-day diversity that makes it feel like a diverse place." Increasing numbers is the Administration's top diversity priority. The grand plan for accomplishing this mission is contained in the campus' *Plan 2008* report that has as its primary goal "increasing the pool of qualified minority applicants." Financial aid, recruiting, guidance and pre-college programs are among the identified tools. Over \$22 million annually is spent by the University System in support of activities aimed at increasing minority enrollment, retention, and graduation.

At the same time there is significant opposition, both on campus and off, to the University's approach to the use of race as a factor to be considered in who is to be admitted to the University of Wisconsin.

Nowhere in *Plan 2008* is there a mention of using race as a "plus" factor in admissions. However, the University openly uses race in



the undergraduate admissions process and transparently uses surrogates for race when considering applicants for admission to the Law School and Medical School. The Fall 2001 freshman admission data for domestic targeted minorities (African-American, Southeast Asian, Native American and Hispanic students) is instructive. Of 15,782 non-minority applicants, twenty-seven

were admitted who ranked in the bottom half of their high school class, and ten of these enrolled. Out of 971 applications from targeted minority students, forty-three were admitted who ranked in the bottom half of their high school class and twenty-eight enrolled.

This suggests that a targeted student from the bottom half of his or her graduating class is twenty-three times more likely to be admitted than is a non-minority applicant. Some of us who voted for *Plan 2008* thought that it signaled that the University might be backing away from the use of race in admissions; but now it only looks as though the subject was not raised because it might have revealed how admissions officers actually use race.

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Regardless, *Plan 2008* is a great improvement over past affirmative action plans which have made grand pronouncements and have produced disappointing results. The intent is to reach down into the K-12 education system and, with the admittedly limited resources that the University has to bring to bear on this subject, to help increase the “pool of qualified minority applicants.” The market for qualified minority high school graduates is highly competitive, with the state’s most highly qualified minority students being heavily recruited by elite Eastern colleges and Midwestern universities — like Michigan and Illinois — which offer rich financial packages. After another slice is taken by historically black colleges and universities, the number of targeted students from Wisconsin who can enter the University of Wisconsin at Madison is very small. On the other hand, we have other campuses, such as UW-Parkside, that have a virtually open admission policy.

The question is therefore not *if* our minority Wisconsin high school graduates — who have met the basic requirements for admission — can go to a college or university in the state, but to *which* one. Particularly at Madison, where the standards are most competitive, many people believe that it will be difficult for the University to attract enough minority students either from in-state or out-of-state to reach the University’s minority enrollment goals, without resorting to consideration of race in admissions.

In 2000, slightly over 10% of Wisconsin public high school graduates were classified as students of color. However, because of the lower academic performance of this 10% (relative to non-minority students), only about 7% of those Wisconsin high school graduates qualified for admission to UW-Madison in 2000 were students of color.

It will probably come as a shock to everyone — except admissions personnel who I have heard are trying to keep this under wraps — that the University has already overshot its minority admission goals at Madison. *Plan 2008* directs the University to “improve

recruitment of both new freshman and transfer or re-entering students of color qualified for admission to UW-Madison, until the proportions of entering students of color minimally equal the corresponding racial/ethnic proportions of the Wisconsin high school graduation class qualified for admission.” Do we have a quota here? Our domestic freshmen enrollees of color in 2000 were 9.98%, which overshoots the 7% goal. The Admissions Office has reportedly attempted to suppress these statistics rather than modify its affirmative action admissions procedure.

Irrespective of goals, the University still clings tightly to the use of race as a plus factor in admissions. It feels compelled to modestly increase the number of minority students year by year and cannot resist the temptation to keep a thumb on the scale to make sure that that happens.

I am convinced that the use of race in the admissions process is actually injuring many of the students who are supposed to be helped by the scheme. Also, unswerving dedication to the use of race in admissions has muddied the waters as to how our University personnel think about students of color and has closed down open and fair examination of our policies and a clear evaluation of their results. But first let us look at why some of our students are anxious and frustrated.

There is broad agreement that our nation will be strengthened by including all elements of society in our education system, which includes our universities. Yet beyond that, there is no doubt that a substantial segment of the student population believes that it would not only be just, but actually beneficial to them, to have a more racially diverse student body. The students have little scientific basis for their belief but the message is so consistently delivered that it has been commonly accepted. A common theme emanating from the University’s multi-cultural offices is that prospective employers will not want to hire students who come from universities with a deficient proportion of targeted minority students. Students who are anxious about their

employment opportunities worry about this even though UW-Madison students are actively pursued. This is, after all, the most diverse country in the world. It is true that major corporations appear on campus and profess their desire to hire more minority graduates, but as far as I know no one has refused to interview on the basis of the racial makeup of our student body.¹

The original, innocent, and unfortunately incorrect, assumption behind the use of race as a factor in admission was that if admission standards could be modified (lowered) to permit the enrollment of students from targeted minorities, that the children of those students and their children would be able to enter the university and succeed without assistance. The use of race as a factor in college admission was to last only a generation or two until a sufficient cadre had been developed that could carry on unaided. Looking back we observe that the concept did not work out perfectly with white families and their students, and significantly underestimated other influences that interfered with success. Because, other than recruiting, there was not much else that the University could do; the admissions procedure at least demonstrated that the University was trying to do something. It could also produce modest results in actual numbers, estimated at between twenty-five and fifty incoming freshman each year at Madison. Then a landmark legal case changed the landscape.

In 1978, the U.S. Supreme Court took up the matter in the case of *Regents of the University of California v. Bakke*. Justice Powell, in a lone opinion, joining the majority, narrowly defined how race might be used in the context of admissions. He felt that in deciding between closely matched applicants, it would

not be unreasonable for an admissions officer to weigh the contributions that a particular applicant might make to the richness of the learning environment. He went on to opine that a diverse student body contributes to the “robust debate” protected by the First Amendment and that diversity might be a compelling interest — a constitutional interest, in some cases. In other words, race could be used as a “plus factor” for certain individual applicants. This is where the concept of diversity as a rationale for racial discrimination in admissions gained legitimacy.

Not as widely understood was Powell’s categorical rejection of the University of California’s defense that race preferences could be used as compensation for past injustices. In Powell’s words:

At Madison, a targeted student from the bottom half of his or her graduating class is 23 times more likely to be admitted than is a non-minority applicant.

We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative or administrative findings of constitutional or statutory violations . . . Without such findings of constitutional or

statutory violations, it cannot be said that the government has any greater interest in helping one individual than in refraining from harming another. Thus, the government has no compelling justification for inflicting such harm.

This concept, which required the University of Mississippi to discriminate in order to include black students because of the University’s record of discrimination, prevents the University of Wisconsin from so discriminating for compensatory purposes because Wisconsin had no record of discrimination.

Like other universities around the country that had already instituted the consideration of race in their admissions policies, the

University of Wisconsin, guided by its legal department, was partially successful in diverting to a diversity rationale to justify its race-influenced plan. Even at the highest reaches of the University, this shift was either poorly understood or ignored by university officials who continued to transparently reveal their original and basic desire to compensate for past injustices or discrimination. Over the years that I have been working on this subject, I have compiled a deep file of communications from university personnel and admissions officers revealing that the need to compensate is a primary motive.

The law on the subject could change as a result of two Michigan cases, named after their lead plaintiffs, Gratz and Grutter, that have been decided at the federal district court level and have been heard by all nine judges of the 6th Circuit of the U.S. Court of Appeals. It is almost assured that regardless of the outcome, the matter will be moved on to the U.S. Supreme Court, which has not taken up the matter since *Bakke*.

With the Supreme Court perhaps about to provide guidance on this matter, why is it important to look at this subject now? It is highly likely that within a year or so that the high Court may come down with a decision determining that the admissions process that we are now using is unconstitutional. On the other hand, it is also possible that the Court could continue to allow some form of race consideration under strict guidelines. All this will tell us is what are the limits of the use of racial discrimination in admissions. It will not tell us that we must discriminate. For instance, the states are permitted to impose the death penalty under strict conditions. Here in Wisconsin we have declined to do so just as we are free to decline to use affirmative action in the admission process. All the Court can ever tell us is that we can. It will never tell us that we must.

So here we have it, an environment where we have an ongoing program of race preferences in admissions that in the last thirty or thirty-five years has:

- not produced the expanded pool of qualified minority applicants that was promised,
- the opposition of 85% of ordinary citizens, as measured by national and Wisconsin polls,
- a growing understanding that the problem is not at the University end but at the K-12 end of the pipeline,
- part of a student body who is blaming the University for not producing adequate numbers of minority students in their classes,
- very disappointing minority graduation statistics (this will be described later),
- a legal justification for the current admissions policy that is at least tenuous and will certainly be different after the Michigan cases are decided and,
- a Board of Regents who are not together on this subject.

It is understandable that under these circumstances the University bureaucracy will resist change, but unfortunately, necessary inspection of the results of our current policies are also stymied.

Besides the question of legality, we must ask if the use of race in admissions is doing good or harm. So powerful is the opposition to examining admissions policies that, even when they are obviously out-of-whack, the system is paralyzed. A good example is the inability of the University to reexamine the preferred racial and ethnic categories. The "Southeast Asian" group is defined as individuals who have an ancestor who emigrated from Vietnam, Cambodia or Laos after 1971. At the end of the Vietnam War, sympathy, guilt and good old-fashioned kindness merged to support the welcoming of refugees from these Southeast Asian countries. The Southeast Asian group was attached to the existing affirmative action movement and without coercion the University of Wisconsin decided to grant individuals from that group preferred admis-

sions status. The motivation was totally compensatory. After *Bakke*, it was astonishingly discovered that these same individuals were the only Asians who could contribute to “diversity,” thereby requiring continued preferential treatment. At the same time as our students were conducting rallies for the Burmese and East Timorese, no one dared suggest that people from those countries should be preferred because it would reveal the rickety underpinnings of the entire enterprise. Here, in plain view of the sifting and winnowing plaque, inquiry is shushed up with the warning “you can’t go there.”

Here in Wisconsin we know that our black students are, to a shocking degree, failing in the K-12 system. We also know that too many are failing to graduate from high school and that a pathetically small percentage are qualified to go on to university. Beyond that, we know that the University System’s minority retention and graduation rates are disappointing. Presently, about 75% of freshman entering the UW-Madison graduate within six years. For targeted minorities, this percentage drops to about 53%. About half of this difference can be explained by UW-System data, which shows that retention is strongly correlated to academic qualifications (six-year graduation rate drops an average 6% to 8% with every 10% decrease in high school class rank). Other factors felt to contribute to the difference in retention rate between targeted and non-targeted students include campus environment and lack of financial aid. It is obvious that the University should be better quantifying the root causes of differences in retention rates so that resources can be most efficiently allocated to address the situation.

[W]e have enough information before us to strongly suspect that we are enrolling under-prepared targeted minority students . . . who will fail to graduate in satisfactory numbers.

It is clear to me that we have enough information before us to strongly suspect that we are enrolling under-prepared, targeted minority students to UW-Madison and other campuses who will fail to graduate in satisfactory numbers. This is not to say that certain individuals will not beat the system and succeed in spite of undistinguished entrance qualifications. This does not cover up the fact that an unacceptable number will fail. Their failure will be even worse because they probably thought they were doing everything right and trusted those who were guiding and advising them. I make this assertion with imperfect data but with confidence that I am right; because, if

students, who would not have been admitted were it not for consideration of race, were succeeding in large numbers, I am sure the administration would be taking every opportunity to publicize that fact.

Over four years ago, when I first joined the University of Wisconsin Board of Regents, a senior administration official confided to me that the Madison campus had just hired an admissions officer who was “the best person in the country at

keeping an affirmative action admissions program going without ending up in litigation.” This individual, who was proud that the University was pushing the envelope on admissions, was unaware that I was instinctively uneasy about what I was hearing.

Since that time I have tried to figure out what it is about people that polarizes them on this issue. When it became evident that the number of minority students involved in the freshmen class at Madison was only twenty-five to fifty, I asked then-Chancellor David Ward, “Is this only about symbolism?” He said, “Yes, now you’ve got it.” What kind of symbolism is it? I would characterize the

University of Wisconsin administration as representing the Left, or at least people who do not want to buck the Left. The origins of affirmative action in admissions started back in the civil rights era of the 1960s through the activism of the Vietnam period of the 1970s. Many people have spent their whole life in sympathy with one or both of these important issues. Somehow or other along with it came affirmative action in college admissions as part of the program. This was made more complicated because many of the causes adopted by the Left were just and often vindicated. In the University setting, original (diverse) thinking on this subject was unwelcome.

People like me, who I will have to characterize as being more to the Right, do not believe that targeted minority students are innately so different that they should have standards of admissions that are different from anyone else. This group goes back to the paths taken by waves of immigrants from all over the world that have made it in the U.S.A. They are willing to give a helping hand, but they believe that everyone should be held to the same standard. They do not believe in social promotion. So other than having the Supreme Court tell us what to do, what can we as Wisconsin citizens do for ourselves?

The first step should be for the University, perhaps led by the Faculty Senate, to reveal as much as possible about what is happening to students who are preferentially admitted on the basis of race. Admissions officers should give up their "emperor has no clothes" approach and help us track what is happening. At the same time we should be exploring alternatives. I fully realize that some University officials have dedicated virtually a lifetime to supporting and administering a racially preferential admissions policy. For them to admit that it did not work out will be hard. They would rather retire and have something change later. I am hoping that these people can be open enough to examine some alternatives. Specifically, I believe that it would be fruitful to explore more generous minority grants and scholarships, such as those offered by Illinois and Michigan, in order to reach the same goals

without the use of race as a factor in admissions. Think of the benefits. The admissions officers could stop playing games, the risk of an expensive (Michigan spent \$10 million) lawsuit would be eliminated, the stigmatization of students of color would have no basis, targeted minority graduation rates would improve, and 85% of the population of Wisconsin would think that the University did the right thing. We should also keep in mind that the *Plan 2008* initiatives already underway should have substantial and important benefits. The state of Wisconsin is famous for being progressive and innovative. Let's get at it.

Notes

1. There have been a few studies aimed at attempting to prove the educational benefits of diversity, which in my mind are made-to-order social science and have been effectively refuted.

The most important of these was reported in *The Shape of the River* by William G. Bowen and Derek Bok in 1998. The book analyzed a large database called "College and Beyond" compiled by the Mellon Foundation (which is currently led by Bowen). The database, compiled from twelve elite eastern universities, measured several thousand black students' initial academic qualifications, their achievement as undergraduates, and their post-graduate experience. The conclusion that these students did well in school, and in their careers, and were satisfied with their lives was applied generally to support the use of affirmative action in admissions at all institutions of higher learning. Moreover, they hypothesized that approximately 63% of black students admitted in 1976 to colleges and universities surveyed would have been admitted without consideration of race. Because not all students responded to their survey, they have no idea how many of the responses came from black students who would have been admitted under a race neutral system. Importantly, there was no analysis of what the results would be at multi-institution systems such as Wisconsin and California, whose campuses have admissions policies ranging from very competitive to open. *The Shape of the River* also makes a giant leap when it claims that these students who attend elite Eastern schools provide the backbone of the black middle class. I would contend that affirmative action in the post office and the military alone are much more responsible for that effect.

A second and more recent work was the expert report provided by Patricia Gurin in the two Michigan cases discussed in this article. This report was intended to support the concept that "students who experience diversity in classroom settings and in informal interaction show the most engagement in various forms of citizenship, and the most engagement with people from different races/cultures. They were also the

most likely to acknowledge that group differences are compatible with the interests of the broader community." Gurin's testimony was effectively devastated by a report by Robert Lerner and Althea Nagai who concluded, "There are no statistically significant relationships between a school's racial/ethnic diversity and any outcome measures We conclude that Dr. Gurin has not shown statistically that racial/ethnic

diversity in a school yields educational benefits." None of the research available even comes close to answering how universities should go about discriminating in favor of one set of students and against another, what the optimum ratio of races is, and finally what goal needs to be reached in order to abandon the system if it is ever to be abandoned.