Afterword

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The decisions of the Supreme Court in the cases involving affirmative action in admissions at the University of Michigan have provided us with the guidance that higher education has been seeking for decades, namely, a well-structured road map that permits all colleges and universities to create policies of affirmative action that more clearly articulate the goals of diversity. The University of Michigan, like many other colleges and universities, began a review of current policies almost immediately following the delivery of the decisions. But the decisions do not merely chart the course for higher education—they issue a challenge to our entire nation, a challenge to create a society in which affirmative action will no longer be necessary.

The decisions of June 2003 are the latest iteration of a series of landmark decisions on education and civil rights that the Supreme Court has issued over the past fifty years. It has created large Newtonian cycles of action and reaction in the area of diversity, with three landmark decisions issued in quarter-century increments. The profound rulings on racial equality in *Brown v. Board of Education* (1954), *Regents of the University of California v. Bakke* (1978), and the University of Michigan cases have altered, and will continue to shape, the landscape of our universities and our society.

These decisions have produced phases in the evolution of our society. The decisions themselves are just the starting point for change: the policy shifts that have occurred *in between* those major decisions are what have truly transformed our nation. As of June 23, 2003, we have entered the next period of transformation that will define the history of civil rights and educational access in our country.

The Court issued a resounding reaffirmation of affirmative action as a compelling state interest, a policy that had been clearly articulated in the multitude of amicus briefs that were filed at the Supreme Court. These briefs offer vivid insight into the value of diversity to our entire society, from universities to industry to the military. While many educational institutions and organizations filed briefs on our behalf, the Court also received statements from major corporations, from nonprofit organizations, from elected officials, and from retired military leaders. It is striking to see the impact of these briefs on the thinking of the Court, and the manner in which its decisions reflect the broad concerns of many sectors of our society.

The University of Michigan made a strong case for the pedagogical benefits of diversity in campus communities and classrooms, but the amicus briefs made an equally strong case for the advantages of diversity in the workforce of our country. For example, General Motors conveyed the view that a diverse workforce is necessary not only for the sake of its own industry, but for the national and world economy:

> In General Motors' experience, only a well educated, diverse work force, comprising people who have learned to work productively and creatively with individuals from a multitude of races and ethnic, religious, and cultural backgrounds, can maintain America's competitiveness in the increasingly diverse and interconnected world economy.[1]

This quest for the strength that diverse members of society can provide to an organization or community extends to cultural endeavors as well:

> MTVN's [Music Television Networks'] unique mix of eclectic shows and edgy attitude was invented—and is being reinvented daily—by the most dynamic and eclectic people in the industry. This unique mix, in turn, is feeding the marketplace of ideas and shaping national and global attitudes. The future of American business and the quality of message communicated through the media "depends upon leaders trained through wide exposure to the ideas and mores" as diverse as the nation's people.[2]

One of the most striking briefs filed in support of the University of Michigan was submitted by retired military officers of the United States armed forces. Their accounts of the special situations created by the military chain of command were cited by the justices during the oral arguments of the case, and in the final Court decision in *Grutter v. Bollinger.* These former leaders of our armed forces dynamically articulated the problems they had faced because of the lack of diversity in the upper ranks of their organizations:

> The chasm between the racial composition of the officer corps and the enlisted personnel undermined military effectiveness in a variety of ways. For example, military effectiveness depends heavily upon unit cohesion. In turn, group cohesiveness depends on a shared sense of mission and the unimpeded flow of information through the chain of command. African-Americans experienced discriminatory treatment in the military, even during integration, but the concerns and perceptions of African-American personnel were often unknown, unaddressed or both, in part because the lines of authority, from the military police to the officer corps, were almost exclusively white. . . . Indeed, "communication between the largely white officer corps and

> black enlisted men could be so tenuous that a commander might remain blissfully unaware of patterns of racial discrimination that black servicemen found infuriating."[3]
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> Making matters worse, many white officers had no idea how serious the problem was. "Violence and even death proved necessary to drive home the realization that the various assistant secretaries, special assistants, and even commanding officers had only the faintest idea what the black man and woman in the service were thinking." . . . Ultimately, "[t]he military of the 1970s recognized that its race problem was so critical that it was on the verge of self-destruction."[4]

This argument from the military was introduced by the justices of the Supreme Court themselves in oral arguments; it was clear then, as well as in the eventual decisions, that the insights of the retired military leaders had an impact on the justices. Justice Ruth Bader Ginsberg asked,

> What is your answer to the argument made in that brief that there simply is no other way to have Armed Forces in which minorities will be represented not only largely among the enlisted members, but also among the officer cadre?[5]

This question from Justice Ginsburg found answer in the cogent majority decision she signed, which was authored by Justice Sandra Day O'Connor:

> [H]igh-ranking retired officers and civilian leaders of the United States military assert that, "[b]ased on [their] decades of experience," a "highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle mission to provide national security." . . . At present, "the military cannot achieve an officer corps that is *both* highly qualified *and* racially

> diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies."[6]

Given the strong pronouncements of the Supreme Court regarding admissions policies, our universities can proceed with some certainty about the next steps we need to take in order to comply with the guidelines the Court issued. But our universities also must address issues that go far beyond our campuses, because we must work toward the goal that Justice O'Connor articulated:

> We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.[7]

The Court suggests that universities study and emulate programs that are designed to provide diversity without the explicit policy of affirmative action, such as those programs created in states where affirmative action may not be applied in college admissions. But I would maintain that even with the implementation of beneficial new programs, we must address more elemental issues regarding the applicant pool of qualified students.

To put it simply, we are not educating enough minority students, and are not educating them well enough, to assure that minority applicants will comprise a significant percentage of our applicant pool within the next twenty-five years. We must begin to tackle this problem on several fronts.

First, we must find ways to improve the elementary and secondary school experiences of minority students. This will require effort from government, from school boards, from colleges and universities, and from families. We will need to work together to create better opportunities—a wider array of advanced courses and excellent teachers—to prepare children for the day that they apply to college. Many of the schools in our cities function in areas of

poverty and have significant minority enrollments. These are the schools to which we need to bring ideas and resources, because we cannot afford to lose the minds and lives that could flourish with better opportunities. Justice Steven Breyer noted these problems in the discussion during the oral arguments of our cases:

> [W]e live in a world where more than half of all the minority—really 75 percent of black students below the college level—are at schools that are more than 50 percent minority. And 85 percent of those schools are in areas of poverty. . . . [M]any people feel in the schools, the universities, that the way—the only way to break this cycle is to have a leadership that is diverse. And to have a leadership across the country that is diverse, you have to train a diverse student body for law, for the military, for business, for all the other positions in this country that will allow us to have a diverse leadership in a country that is diverse.[8]

In addition to the actual circumstances of the schools, we must also work to overcome the achievement gap of minority students. Too often, self-imposed fears hold these students back, a cycle of misperception that needs to be broken. Research has revealed the complications that institutions and students face in overcoming stereotypical perceptions: "it is . . . difficult to design programs to overcome 'the threat in the air' that is the hallmark of stereotype vulnerability, for this involves a manipulation of students' deepest feelings, which are often unconscious or unacknowledged."[9]

When students see themselves as less qualified, they lack the confidence necessary to succeed in the competitive academic world. At the University of Michigan, we have been dedicated to the idea that every student we admit is qualified to be admitted, and the reason we argued so vigorously for the continuation of affirmative action was that we did not intend to lower our standards to create a broader pool of minority students. Once the students are on our campuses, we will need to make sure that they are entering a welcome environment that encourages all students to

strive for success, and to eliminate the false perception of differential standards.

At every turn, we need to contradict the notion that diversity is incompatible with excellence; the two go hand in hand. Indeed, the Court recognized that diversity has educational benefits for all students and is therefore a matter of educational quality as well as equality. In doing so, the Court rejected Justice Scalia's suggestion that there is an inherent trade-off between diversity and quality:

> [T]he problem is a problem of Michigan's own creation, that is to say, it has decided to create an elite law school, it is one of the best law schools in the country. And there are few State law schools that—that get to that level. . . . Now, if Michigan really cares enough about that racial imbalance, why doesn't it do as many other State law schools do, lower the standards, not have a flagship elite law school, it solves the problem.[10]

We will need to bring not only our resources, but our research and ingenuity to these problems. We brought an impressive array of research to our defense at all levels of these lawsuits, as Professor Gurin has indicated in her essay in this volume, and now we must ask our experts not only to begin to study the new questions we face, but to help us define what those questions should be.

We are twenty-five years removed from the *Bakke* case, which helped establish a policy of affirmative action, but the Supreme Court's new decisions carry much more responsibility than did *Bakke.* Not only do we need to define our policies within the context of these newest decisions, but we also must utilize our new policies in a way that will allow us to end them. The Court has handed us a very complicated assignment, and a putative deadline. In the next twenty-five years, we must accomplish far more than we managed to do in the period from 1978 to 2003. But our society now has a deeper understanding of these complex issues, which has led to clear guidance from the Court, and a sound foundation on which to construct our critical next steps.