

Fighting the Battle for Racial Diversity: A Case Study of Michigan's Institutional Responses to *Gratz* and *Grutter*

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How did the University of Michigan become a viable defendant of race-conscious admissions policies? Pursuing a simple legal strategy to address Gratz v. Bollinger (2003) and Grutter v. Bollinger (2003) was certainly an option; however, Michigan's leadership chose to respond in ways that increased the institution's role in the affirmative action debate, resulting in the Supreme Court's decision to affirm the use of race in admissions. This case study explores Michigan's institutional responses to understand those elements that are critical for institutional engagement as it relates to promoting race-conscious policies, racial diversity, and inclusion.

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SINCE THE INCEPTION of race-conscious affirmative action policies in the mid-1960s, the use of race in college admissions has generated much debate in the higher education community. Focusing on the need to remedy the legacy of past- and present-day societal discrimination, proponents have claimed that affirmative action addresses educational access for historically underrepresented minority students (Edley, 1996; Francis, 1993; Tierney, 1997). Opponents, however, have claimed that race-conscious affirmative action policies are unconstitutional, sanctioning reverse discrimination, and have argued that the country needs to adopt race-neutral or color-blind

policies to minimize the influence of race (Brest & Oshige, 1995, Cohen, 1996; Clegg, 2000; D'Souza, 1991). These conflicting notions of race-conscious versus race-neutral remedies anchor the positions of the two opposing camps.

As the battle between the two camps progressed in the 1990s, selective, public institutions became the primary battlegrounds for an ongoing struggle regarding access for underrepresented minority students. Because race-conscious affirmative action policies were designed to increase the number of admitted minority students and provide greater opportunities to the economically and educationally disadvantaged, White plaintiffs legally challenged these policies and charged institutions with reverse discrimination (Kaplan & Lee, 1995). Although selective, public institutions were the primary targets of an aggressive anti-affirmative-action campaign launched by conservative activist organizations, the higher education community was relatively unsuccessful in communicating the need for affirmative action.

During the course of this campaign, four institutions came to the forefront as defendants of lawsuits that challenged their race-conscious admissions policies. They were the University of Texas Law School; the University of Washington Law School, the University of Georgia; the University of Michigan College of Literature, Science, and the Arts; and the University of Michigan Law School. Although each case advanced through the court system, the University of Michigan became the ultimate defendant of race-conscious policies when plaintiffs of the Michigan cases, *Gratz v. Bollinger* (2003) and *Grutter v. Bollinger* (2003), were granted an appeal hearing by the highest court of the land in December 2002. Approximately 6 months later, on June 23, 2003, the U.S. Supreme Court issued rulings for both cases.

According to the earlier U.S. Supreme Court *University of California Regents v. Bakke* (1978) ruling, a race-conscious admissions policy must pass muster under a two-pronged test. First, is there a compelling state interest met by taking race into consideration? Second, is the policy narrowly tailored such that it does not cause undue harm to those outside of the preferred group? Though *Bakke* raised the issue of the two-pronged test, the ruling was considered ambiguous in that it did not clearly articulate the parameters of compelling interest or narrow tailoring with respect to using race in admissions. The *Grutter* (2003) and *Gratz* (2003) decisions clarified the legal standards of compelling interests and narrow tailoring, respectively.

By a 5-4 majority vote in *Grutter* (2003), the court agreed with the University of Michigan argument that maintaining a racially and ethnically diverse student population is a compelling societal interest. The court also made reference to the social science research presented by Michigan, along

with *amici*, arguing that educational benefits, as well as other social benefits, flow from a diverse student body. Furthermore, the court determined that the University of Michigan Law School admissions policy did not violate the Fourteenth Amendment of the Constitution but met the standard of narrow tailoring. Because all law school applicants are given individualized consideration, the factor of race, although taken into account, is not the defining feature of an individual's application. Hence, there is not a formulaic approach of taking race into account, but a flexible, case-by-case review, on which race, as well as other factors, including gender, legacy, and socioeconomic status, are weighed (Green, 2004a).

The *Gratz* (2003) ruling, on the other hand, was not as favorable toward Michigan. According to a 6-3 majority vote, the University of Michigan's undergraduate admissions policy was not narrowly tailored and violated the Equal Protection Clause of the Fourteenth Amendment. Hence, the court ruled in favor of the plaintiff, indicating that Michigan's point system for undergraduate admissions, which automatically awarded underrepresented racial or ethnic minority applicants 20 points out of 100 points needed to guarantee admission, did not allow for individualized consideration and therefore was not narrowly tailored to achieve educational diversity. As a result of this decision, the University of Michigan eliminated its point system and developed a new admissions process that allows for individualized consideration of each undergraduate applicant (University of Michigan, 2003). In spite of the *Gratz* decision, however, Michigan won the critical argument that a diverse student body was a compelling interest, justifying the need for maintaining race-conscious admissions policies.

How did the University of Michigan become the leader and defendant of race-conscious admissions policies? How did the institution's executive leadership respond to these legal challenges to defend its position on race-conscious policies? In the existing literature, few studies directly investigate how higher education institutions responded to legal affirmative action challenges in the realm of admissions. The literature primarily addresses employment of faculty versus student admissions and hiring or promotion of women faculty versus minority faculty (Hanna, 1988; Hyer, 1985; Milward, Denhardt, Rucker, & Thomas, 1983; Steele & Green, 1976; Tobias, 1978). Several common threads within the faculty affirmative action literature speak to (a) the role of executive leadership and the context in which that leadership is exercised, (b) coalition building and mobilization of constituent campus groups, (c) the need for faculty liaisons and credible advocates, and (d) the importance of institutional context in the form of structure, culture, and values (Hanna, 1988; Hyer, 1985; Tobias, 1978). These elements, though

important, delineate responses within the campus context. The University of Michigan affirmative action challenges moved well beyond campus boundaries and had a different focus—students, not faculty.

Among the few studies that examined responses of institutions that faced affirmative action admissions challenges, none explored this phenomenon from the perspective of organizational leadership. These studies either focused on campus climate and outreach strategies in the aftermath of litigation or state referenda eliminating the use of race-conscious admissions (Cheeseborough, 2000; Hurtado & Cade, 2001; Hyun, 2000; Lipson, 2002) or focused on the politics affiliated with state referenda (Lipson, 2002; Pusser, 2001; Taylor, 2000). Understanding recruitment and admissions strategies in the aftermath of such challenges is, of course, essential in a post-affirmative-action climate; however, a study that focuses on how executive leadership responded to such challenges, as in the University of Michigan cases, may help education leaders better understand the complex nature of institutional engagement to positively influence the national debate on issues of race, diversity, and inclusiveness. This case study explores how the executive leadership of the University of Michigan responded to the *Gratz* (2003) and *Grutter* (2003) cases to understand the process of institutional engagement as it relates to the promotion of race-conscious policies, student diversity, and inclusion.

METHOD

To explore the phenomenon of institutional engagement, formal, semi-structured, one-on-one and focus group interviews were conducted with key players involved in the litigation, including executive leaders of central administration, student activists, and the Center for Individual Rights (CIR), the organization that filed the lawsuit on behalf of plaintiffs Jennifer Gratz and Barbara Grutter. Purposive sampling guided the selection of informants to acquire participants who had the greatest potential to provide information for case development (Creswell, 1998; Merriam, 2001). A total of 26 informants participated in the study.

Among the 26 informants were those who had very high levels of involvement with either lawsuit in 2001.¹ Informants included (a) University of Michigan President Lee Bollinger, (b) University of Michigan Law School Dean Jeffrey Lehman, (c) Associate Vice President and Deputy General Counsel Elizabeth Barry, (d) Provost Nancy Cantor, (e) Professor Emerita of Psychology at the University of Michigan and leading expert witness Patricia Gurin, (f) student intervenors for the law school case who were leaders of several pro-affirmative-action student organizations, (g) several additional

senior-level administrators, (h) Director of Legal and Public Affairs for the Center for Individual Rights (CIR) Curt Levey, (i) several student leaders who actively protested against the University of Michigan's affirmative action admissions policies, and (j) University of Michigan Professor of Philosophy Carl Cohen, who filed the freedom of information request for admissions information and openly opposed the institution's race-conscious admissions policies. These informants were critical to providing substantive interview data that described the interplay between the parties most intimately engaged in crafting and implementing the institution's response strategies.

Though the litigation covered a period of 6 years, from October 1997 to June 2003, most of the interviews were conducted in 2001, after the first round of lower court decisions were handed down and prior to December 6, 2001—the day oral arguments were made before the 6th Circuit Court of Appeals. Before 2001, the researcher had conducted several formal and informal interviews in 1997 and 1998. In most cases, the researcher had to make multiple attempts to schedule interviews with informants, especially executive leaders. Attempts were made prior to the year 2001, but it was difficult for the researcher to gain access to key players before this time.

Informants were asked to describe their role in the institution and their direct or indirect connection with the lawsuits. If applicable, informants were asked to describe their group or organization, why it was formed, its objectives, and size of membership. The remaining portion of these interviews explored concerns, strategies, tactics, and roadblocks faced by key players connected with the litigation. Interviews lasted an average of 1 hour, ranging from 20 minutes to 2 hours in length.

All formal interviews were audiotaped and transcribed. Several informants gave permission to use their names in the study. Others, however, remain anonymous. The analysis was conducted by developing case descriptions and identifying common themes through coding (Creswell, 1998; Miles & Huberman, 1994; Stake, 1995; Strauss & Corbin, 1990). Feedback from select informants was solicited by sharing rough drafts of findings and interpretations to verify the truthfulness of accounts (Lincoln & Guba, 1985). The researcher also collected and examined legal documents, internal reports, memos, electronic messages, Web sites, newspaper articles, and field notes that span the litigation period.

FINDINGS

The case study data reveal four response strategies that contributed to Michigan's institutional engagement: (a) developing the educational benefits

of diversity argument, (b) openly and effectively communicating Michigan's stance, (c) mobilizing allies, and (d) developing and promoting diversity research. Each organizational response enabled Michigan to strengthen its resolve and national position as a defendant of race-conscious policies. Ultimately, the University of Michigan story reveals how an organization executed a multipronged, comprehensive strategy to make, and ultimately win, the legal argument that racial diversity is a compelling interest.

Developing the Educational Benefits of Diversity Argument

The significance of race has always been a contentious issue in this country, and the higher education community is not exempt from this debate, especially in the arena of admissions (Bowen & Bok, 1998; D'Souza, 1991; Edley, 1996; Herrnstein & Murray, 1994; Wilson, 1995). Although one selective institution may use race-conscious policies because of its mission to enhance diversity and access, another strives to maintain race-neutral policies irrespective of its disparate impact on particular minority groups. Similar to other institutions threatened with affirmative action challenges, University of Michigan leaders had to decide which legal strategy, if any, they were going to advance to defend the institution's policies. As such, Michigan's leadership decided to develop a legal argument that emphasized racial diversity and its educational benefits.

Lee Bollinger, former University of Michigan President, articulated the basis of this argument:

We really decided to set out to prove the fundamental premise of *Bakke*, that race is a significant factor in American life, and that significance gives it salience in an educational setting. That is, it is intimately related to our educational goals, and that people really are affected in their education by being in a diverse environment. So, there are no other ways that we can do this acceptably, then by using race as a factor in admissions. So that has been the thrust and focus of our legal defense.

After securing the legal services of the highly reputable Washington, D.C., firm of Wilmer, Cuter, & Pickering, the core essence of the legal strategy was determined when the litigation team realized that both the admissions policies and mission were in alignment. According to the evidence, the logical and correct defense was that the institution's admissions policies were implemented to achieve its mission. Jeffrey Lehman, former Law School Dean, described this turning point in the case as a "critical moment."

And [the legal team] spent hours and hours interviewing the director of admissions and staff out there. And they emerged and said . . . you know what, the heart of our

defense is the policy. That was, I think, a critical strategic moment in the case. They said . . . this policy is sound, it's right, and it's in fact what the administrators do, . . . and we're going to defend it. That was a key moment in the litigation strategy.

Elizabeth Barry, former University of Michigan associate vice president and deputy general counsel, reiterated the appropriateness of the diversity defense because of the institution's policies:

When one prepares a defense, you have to prepare a defense . . . [based] on the facts. And the facts here are that the university has the policies it has today because it is pursuing the educational benefits of diversity. So that has to be our defense. . . . We don't have a choice to choose some alternate defense that might be legally viable. What we have to do is choose a defense that goes with our facts. . . . If you just pull a defense from thin air because it may be legally viable, you won't be successful. So we have to defend our policy based on why we have it. And the reason we have it, in both cases, is to pursue the educational benefits of diversity.

To substantiate that educational benefits are enhanced by a racially diverse student body, Michigan's strategy was to establish that race still matters and influences the lives and experiences of citizens in this country (Green, 2004b). Patricia Gurin, professor emeritus of psychology at the University of Michigan and leading expert witness for Michigan, underscored that one could not address diversity unless racial diversity was singled out as special. She said, "you don't go very far on diversity if you can't argue that there's something special about racial diversity. After all, the Fourteenth Amendment doesn't have anything to say about other kinds of diversity."

In contrast to the University of Michigan, the CIR argued a very different position with respect to diversity. Curt Levey, director of legal and public affairs at CIR explained:

Our position, and we believe it's also the position of the Supreme Court, is that racial preferences, explicit racial preferences, can only be justified as a remedy for an institution's own past discrimination. And they can't use it to achieve the right racial balance on campus; . . . they can only be used to remedy the effects of the institution's own past discrimination. That said though, we have nothing against true diversity. In other words, if a university is seeking true diversity, diversity of ideas, experiences, backgrounds, philosophy, and racial diversity happens to be a side effect of seeking that, that's fine. We're not against giving preferences based on social economic disadvantages or any other kind of demonstrated disadvantage. But we are against the blind awarding of preferences based simply on skin color.

CIR clearly had an opposing stance that was critical of Michigan's diversity position. However, additional criticism came from among the student intervenors, who petitioned for defendant-intervenor status for the law school case and were permitted to join the lawsuit in 1999, 2 years after the initial petition was filed. Maranda Massie, lead attorney for the defendant-intervenors of the law school case, expressed that diversity was a notable goal but risked the danger of being interpreted too narrowly as tokenism versus true integration:

[I have] doubts and concerns . . . with . . . how to not undermine the university's position, while expressing our views in the strongest and most robust way possible. I think that it's hard, because the diversity argument can be anything . . . from something that really approaches . . . integration, . . . or . . . tokenism. The more conservatively diversity is expressed, the more it's . . . incomplete, to me, and . . . to the people I work with too.

Though there were major players, including CIR and the student defendant-intervenors, who were intimately connected to the litigation and posed challenges to the diversity argument, University of Michigan leaders proceeded to develop the diversity rationale and, in time, began to share the institution's stance with various stakeholders and the public.

Openly and Effectively Communicating Michigan's Stance

Terms, such as *social justice*, *diversity*, *racial preferences*, *integration*, *reverse discrimination*, and *quotas*, were often used by either challengers or proponents of race-conscious policies. Given the myriad of polarizing terminology and positions characteristic of the affirmative action debate, Michigan's leadership understood that it was important to clearly and effectively communicate why the institution had decided to aggressively defend its affirmative action policies. Barry said, "we had thought about our task of not just fighting a legal case, but communicating about why diversity is important to us, why we're fighting this litigation."

Barry stated that, traditionally, when parties are engaged in pending lawsuits, there is a strong inclination to say nothing at all or as little as possible to the press and the public. However, understanding the social significance of *Gratz* (2003) and *Grutter* (2003), the executive leadership team determined that taking the silent approach was not a viable strategy (Green, 2004b). Again, Barry spoke to this issue:

We recognized early on that just fighting this in the court of law was not enough. We really had to fight this battle in the court of public opinion, in part, because our

opponents were fighting the battle in the court of public opinion. The first that the world heard about this lawsuit was in *The New York Times*, not from the court. And so we knew that we needed to set up a really thorough effective communication strategy for all of the various constituent holders in the case, alumni, our students, faculty, but then, the local and national community more broadly defined . . . and expose some of the myths around affirmative action to make clear what the university's position is.

Constituencies that were targeted consisted of allies, legal parties, the media, and university officials who made up the communication network that was critical for keeping all informed and aided the decision-making process. As former deputy general counsel for the University of Michigan, Barry had the primary responsibility of directing the communication effort for the lawsuits. As the senior administrator responsible for maintaining communication with various groups, she expressed the need to "go around the circle," referring to a diagram that she used to keep track of various internal and external constituencies:

When something comes up, I tell myself "go around the circle, go around the circle," otherwise, it's easy to let balls drop or leave people out of the loop. So this is me in the center and my responsibilities for keeping people informed and not just informed, but involved in the decision making. You've got outside counsel here. You've got key witnesses . . . media, internal communication people. We have other people, mainly the general counsel and then other lawyers, the regents, our insurer, and then we have a lot of parties that have supported us, who filed amicus briefs, and they have to be kept informed as well. And then you have intervenors. So my job has been to be the primary point person on the cases internally for the university.

Consistent with Barry's comments, former President Bollinger noted that misinformation and misperceptions regarding admissions and the use of race in admissions permeated the public debate. Because of these misperceptions, it was also important to communicate Michigan's position and the truth regarding these issues. Bollinger explained what was done to dispel these misperceptions:

I felt it was critical to explain our position. Another factor was that I felt that there are many misperceptions out there . . . about this issue, especially about the admissions process and how it works and how race is taken into account as a factor along with lots of other factors. So just to explain the truth was a significant objective. Now on that, I would summarize what we did in the following way. First of all, we made all kinds of information about the admissions process and our position in the case publicly available on the Internet, in brochures, in speeches.

The strategy to openly and effectively communicate Michigan's stance was also reiterated by former Provost Nancy Cantor. She highlighted the need to reach out beyond the confines of the campus to share Michigan's stance with national stakeholders.

Well, I think it was very important to articulate the position to the stakeholders in the state and nationally and to really emphasize with the public the educational value. And so, for example the relationships with General Motors or those [who filed] amicus briefs . . . and talks that were given nationally by Lee [Bollinger] or by me or by others to try to really develop the educational value position and articulate it, I think was a clear strategy.

Michigan's strategic responses to *Gratz* (2003) and *Grutter* (2003) were not without criticism. One former senior administrator said,

It's reactive; it's not strategic. In other words, they are reacting to a particular legal challenge, . . . responding to the nature of the case. But the . . . much broader strategic end, which really involves institutional change, which characterized the 80s and the 90s, . . . is absent. . . . It's reactive. It's defense. It's not offensive.

On the other hand, Professor Carl Cohen, who openly disagreed with Michigan's affirmative action policies, commented favorably regarding the openness of how campus dialogues had been conducted. Because Professor Cohen believed that the Michigan cases represented "critical moments in the controversy over race-based admissions," he expressed that the leadership of the institution had handled the cases with "dignity and thoughtfulness" and that he was proud and pleased with the process. As expected, members of the campus community had divergent views regarding how the institution's leadership had responded to the cases. But, in spite of these and other opinions, the core group of executive leaders responsible for addressing *Gratz* (2003) and *Grutter* (2003) expended, as they saw it, the necessary time, energy, and resources to defend an important legal argument—the educational value of diversity.

Mobilizing Allies

Although members of the senior leadership team communicated Michigan's position in support of race-conscious policies, they also sought to galvanize allies from different sectors of American life. Involving to a great degree the attention of former President Bollinger, the institution went to the higher education community, high-profile political leaders, corporate America, and the United States military for public support (Green, 2004b). Mobilizing allies and initiating coalitions proved to be instrumental for the *Grutter*

(2003) Supreme Court decision; nonetheless, these parties were not as forthcoming as one would have anticipated of organizations that had claimed to promote and support diversity.

Although the practice of using race as a factor in admissions was implemented among many selective, public colleges and universities, there was disagreement regarding its fairness (Bowen & Bok, 1998). Former President Bollinger indicated that it was important to have unanimous public support from higher education, specifically from the umbrella organizations and associations:

I felt that we needed to enlist the unanimous support of all higher education. And that sounds easier than it in fact is to do, because whenever an institution is sued, other similar institutions frequently want to back away from them. And so, a lot of work early on was on making sure that the AAU [American Association of Universities] and the ACE [American Council on Education] and other educational institutions were very supportive, publicly supportive. And we have received unanimous support of higher education. [This was] very, very important to us.

After major players in the higher education community endorsed the University of Michigan's position, the focus moved beyond the education sector to the political arena. Of the many government officials that could have provided support, alumnus and former U.S. President Gerald Ford became an ally. Bollinger recalled the manner in which former President Ford was approached:

The first person I went to on this was Gerald Ford, President Ford. And we had a conversation. He reviewed the materials that we sent him on our admissions process and our defense in the case, and then he wrote this op-ed piece 2 years ago this past August, which was a very, very important event in the history of this issue. He was the first major public figure to speak out. [He was] fully supportive not only of diversity—because most people now accept diversity . . . in an educational setting—but of the particular policy of trying to get diversity through the admissions process. And he spoke eloquently about this and wrote this himself. I admire him tremendously for this. I think it was a very courageous thing to do. He didn't need to step into the middle of a major national issue. And there are all kinds of ways to write that piece that would allow him later to disassociate himself from it. He didn't choose any of those possible outs. He said I believe that race is still a significant matter, unfortunately, in American life, and I think this is the way to deal with it.

Former President Ford was an extremely important ally for the University of Michigan. In addition to his prominent political status, he is a graduate of the institution and a member of the Republican Party. When his opinion

piece, titled "Inclusive America, Under Attack," appeared in *The New York Times* in August 1999, many around the country took notice and viewed the University of Michigan as a more viable opponent. According to Lehman, former dean of the law school, Ford's declaration of support was a "key moment." Ford's statement also paved the way for other prominent political figures to speak out on behalf of the University of Michigan, voice their stance, and highlight the need for affirmative action and the continuation of inclusive policies.

With the backing of major higher education associations and political figures, the illusive corporate sector was the next target. Although prior conversations with corporate America had taken place, a more formalized vehicle for discussing diversity issues was initiated in 1999. This formalized dialogue was named the *Diversity Initiative of the Business-Higher Education Forum*, a partnership of the American Council on Education and the National Alliance of Business. Barry, who worked with the *Diversity Initiative*, explained the purpose of this effort:

President Bollinger, together with former President Rudenstine of Harvard, decided that it was very important to bring business into this conversation. They started something called *The Diversity Initiative*, which is now housed under the American Council on Education Business-Higher Education Forum. That's a coalition of higher education institutions and American businesses who come together to talk publicly about the educational benefits of diversity and why that's important to the domestic economy; well, not just to the economy, but to the success of businesses on several levels.

Even with the initiation of formalized dialogue in 1999, it remained difficult for Michigan to garner the support of major corporations. Not until the summer of 2000 did Michigan leaders finally make a breakthrough. The General Motors Corporation (GM) decided to publicly support the University of Michigan and submit an amicus brief. Following GM's announcement, during the fall of that same year, twenty Fortune 500 corporations publicly announced their support for the University of Michigan. These companies also filed an amicus brief on behalf of the University of Michigan. Three years later, similar briefs were filed for the U.S. Supreme Court cases *Gratz* (2003) and *Grutter* (2003). Their briefs, as well as others submitted by key stakeholders, articulated support for the notion that diversity is a compelling state interest, a key component of Michigan's argument (Fortune 500 Corporations, 2003; General Motors Corporation, 2003; Gurin et al., 2004).

With public support from prominent higher education organizations, political figures, and corporations, Michigan leaders seemed to have convinced critical stakeholders to stand with the institution. But in spite of this

impressive list, the military almost escaped Michigan's grasp, but came on board at the 11th hour. Former President Bollinger explained his thinking regarding efforts to solicit support from the military:

One piece of this strategy that I have not been able to get in the same degree is the military. The military academies use race as a factor in admissions, I am told, just like universities do, in order to get a diversified officer corps. And that's really national defense. In order to have an effective military, you need an integrated officer corps. You need an officer corps that understands race and ethnicity and how it works in society. And so, I have wanted the military academies to speak out on behalf of the importance of this for [national] defense. But so far, I've not been entirely successful at this.

Initially, efforts to involve the military resulted in General Colin Powell making a public declaration in support of the University of Michigan, but his statement did not incorporate the military framework that Bollinger was seeking. That is, General Colin Powell did not state that the military academies endorsed the University of Michigan's position because the academies themselves use race as a factor in admissions to achieve racial diversity in the nation's military. Although Bollinger fell short of his goal, Powell's endorsement was still a victory for the public institution because it was another demonstration of public support from a powerful and highly respected public official ("Candidates for Seat on Board," 2000). But as history bears out, when the cases reached the U.S. Supreme Court, several retired military officials submitted a brief that underscored the necessity to consider race to integrate the military and ensure national security (Retired Military Leaders, 2003).

Developing and Promoting Diversity Research

In addition to waging a public relations campaign to recruit major stakeholders to Michigan's position, the institution embarked on a major research effort to empirically determine the educational benefits of diversity. Though the University of Maryland, College Park, had developed a research record to defend its position and protect its race-specific Benjamin Banneker Scholarship during the *Podberesky v. Kirwan* (1994) case, the institution's central argument did not focus on the educational benefits of diversity but rather centered around the need to rectify past institutional, racial discrimination (Green, 1998). The University of Michigan, on the other hand, essentially developed the first research record to support the assumption that diverse student populations affect and benefit educational outcomes.

Former Provost Nancy Cantor voiced that compiling as much data as possible from sources internal and external to the university was very important

for making the case, because it was an argument that had not been substantiated by research in previous admissions litigation (Green, 2004b). Barry reiterated that a defense supported by “empirical proof” grounded in the proper foundation of educational practice and theory was extremely important for Michigan’s legal team. To develop this research record, both institutional and national studies were solicited, generating and bringing to the forefront diversity related scholarship across the country.

From the institutional perspective, a campus-wide coordination of research initiatives was executed to mobilize these efforts. Coordination was facilitated by the Dialogues on Diversity committee that aimed to promote academic discussions pertaining to diversity and affirmative action. Both former President Lee Bollinger and former Provost Nancy Cantor supported the goals of this committee, appointing former Associate Dean of Rackham Graduate School Earl Lewis as chair. A senior administrator described the committee’s promotional role as the following:

Fortunately, we’re an educational institution, so we then turn to what is a critical public policy issue into an opportunity for learning. And so, what the committee . . . is designed to do, it sees itself doing, is then creating opportunities for us to engage that key issue in an environment that is both scholarly but . . . impassioned in a way. That is, one could be impassioned about a topic and still do it where it’s not just pure hearsay and conjecture, but where one comes armed with the best research methods, tools, and findings possible. And that’s what we’re trying to promote. (Green, 1998, p. 23)

Complementing the internal promotional efforts, Dean Lehman described how senior executive leaders promoted the institution’s position and the research record by engaging the media:

About a year into the trial, we started taking our message out on the road. And Lee Bollinger, Nancy Cantor, Liz Barry, and I each went to visit with editorial boards at newspapers. . . . And we’d say, “we’re here.” I want to tell you three things about this lawsuit that I really want you to understand, and now I’m here to answer your questions, and this is on the record [or] off the record. It’s up to you, but I’m here. Tell me what you just don’t understand, or tell me what you feel is wrong, or let’s talk. It made a big difference, big difference.

DISCUSSION AND IMPLICATIONS

At the outset of this study, the goal was to understand how the University of Michigan responded to two legal challenges while engaging in a national debate on the use of race-conscious policies in admissions. This study reveals four emergent themes or response strategies: (a) developing the educational

benefits of diversity argument, (b) openly and effectively communicating Michigan's stance, (c) mobilizing allies, and (d) developing and promoting diversity research. In light of these findings, faculty affirmative action literature echoes similar themes; however, the present research adds new dimensions that explain institutional engagement outside of the campus community.

Hanna (1988) underscores that institutional values are salient to the process of responding to affirmative action issues. The educational benefits of diversity argument adopted by the University of Michigan also reveal what the institution values—racial and ethnic diversity. In addition, advancing the benefits of diversity argument draws attention to positive, educational aspects of using a race-conscious policy and away from polarizing race-neutral and remediation arguments. Furthermore, the act of establishing the first, substantial research record that documents the benefits of diversity in an educational setting again reveals another institutional value—empirical research. Upholding these institutional values possibly furnished the driving forces imperative for Michigan's rise in leadership status.

Hyer (1985), Hanna (1988), and Tobias (1978) underscore the need for executive leadership to provide the necessary support needed to maintain and implement affirmative action policy. The findings demonstrate that leadership has a vital role in preserving race-conscious policies and communicating the institution's stance well beyond campus boundaries, into both political and public spheres, to fill leadership voids at local, regional, and national levels. Additionally, leadership taking on the role of advocate, as Tobias (1978) notes, is critical for political and substantive gains for the policy.

In Hyer's (1985) study, campus coalitions are formed. Mobilization of allies is characteristic of the Michigan case as well. Though student coalitions and faculty groups declare their support for affirmative action and/or diversity (Defend Affirmative Action Party, 2001; University of Michigan Faculty for Affirmative Action, 1999; University of Michigan Senate Assembly, 1998), the public support of higher education associations, American businesses, and high-ranking retired military officials is a unique outcome of Michigan's mobilization efforts. Furthermore, these allies concur with Michigan and eventually function as credible advocates (Hyer, 1985) and liaisons (Hanna, 1988), reiterating to the courts, media, and public the benefits of diversity and the need to continue race-conscious policies.

Additionally, this study offers implications for practice for educational leaders who find themselves faced with challenges that involve issues of diversity that operate in the realm of public policy and/or institutional policy. As such, the Michigan case illustrates four major points: (a) though challenged by opponents of race-conscious initiatives, if racial diversity is

valued, leadership should not shy away but take a distinct position that directly connects with the organization's mission and values; (b) after development of a diversity stance, especially stances that are race sensitive, leadership must be persistent and effective in communicating such a position; (c) recruitment of campus advocates is useful; however, openly supportive allies outside the local campus community and higher education arena could be critical to advancing the institution's position before the public and the press; and (d) research should be used to play a vital role in shaping, validating, and promoting the institution's policy position. Though the four strategies may not apply to all situations, they provide four important lessons learned that can inform different scenarios, regardless of institutional context.

Taking a distinct position in a public debate is the first step toward institutional engagement. It is certain that multiple viewpoints exist in any contentious debate. However, understanding those perspectives to craft a stance that uniquely distinguishes the institution's position from existing camps of thought and linking that argument with its educational mission and core values allow the organization entry into the debate—not to further polarize, but to educate.

Although taking a clear stance is vital, sharing that position frequently and persistently is extremely important in a public debate. To avoid being placed on the defensive or of being drowned out by competing voices, consistent communication with prominent stakeholders, constituent groups, the media, and the public is necessary. To assume that sharing a position once will accomplish the job is wishful thinking. Furthermore, educational institutions and their leaders cannot assume that the public, along with key stakeholders, will trust and fully accept their message in the context of an ongoing contentious debate. Hence, a comprehensive communication strategy that promotes the institution's stance, buttressed by credible empirical research, stands a better chance of engaging and possibly reorienting the public debate on such issues (Green, 2004b).

Last, an engaged institution reaches out to stakeholders and key players from communities outside of its own arena, which, in this case, is education. Establishing and advancing a unique position in a major public discourse may begin to change the focus of the debate, but securing public support from significant allies who reiterate a similar position and message adds greater credibility, trustworthiness, and authority to the organization's stance.

Overall, the story of Michigan's struggle to defend race-conscious admissions policies provides rich data that inform our understanding of response strategies, as well as elements of institutional engagement. Although policies related to race will always be questioned and challenged, this qualitative study illustrates how dimensions of leadership, organizational values,

communication strategies, and coalition building aid the capacity of institutions to engage in advocacy that impacts public discourse, institutional change, and, ultimately, public policy associated with diversity.

NOTE

1. As a point of reference, since the time of this interview, Elizabeth Barry, Lee Bollinger, Nancy Cantor, and Jeffrey Lehman have moved on to other leadership positions. Thus, in the findings section, they are described as former president, former provost, and so forth.

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